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Canadian Lawyers

A Peculiar Professionalism

HARRY W. ARTHURS, RICHARD WEISMAN, AND FREDERICK H. ZEMANS

Canada is a federal state, embracing two official languages and legal cultures and ten provincial jurisdictions. Its lawyers are dispersed across 3,000 miles in diverse social settings and economic circumstances, but their functions are not formally defined or faithfully recorded. Our attempt to capture a complex reality is made especially difficult because of the extreme paucity of secondary writing on the Canadian legal profession. These caveats notwithstanding, we believe that Canadian materials may, indeed, contribute to current theorizing about the professions.

Students of the sociology of law (e.g., Abel, 1981; Heinz & Laumann, 1983) recently have begun to develop an historical and comparative approach to the legal profession, complementing the valuable work of Freidson (1970), Johnson (1972), and Larson (1977) on the more general problem of the professions. Central to this approach is the assumption that "all occupations under capitalism are compelled to seek market control, the attainment of which is the defining characteristic of a profession" (Abel, 1981: 1120).

Freidson, in his seminal work on the sociology of medicine (1970), distinguished professions from other occupations by virtue of their position of hegemonic privilege in the division of labor. Larson (1977) saw two elements as crucial to the professional project: the creation of a systematic body of knowledge on which to ground claims to exclusive competence and the achievement of control over the production of producers of this knowledge. Because the university emphasized formal training, espoused meritocratic standards, and enjoyed high public credibility, it became the primary vehicle by which professional organizations could attain these objectives.

Several ambitious recent attempts to track the professional project point to a decline in professional dominance. Abel suggests that both in England (see chapter 2) and the United States (see chapter 5) the profession has lost

significant control over the supply of legal services and that the defensive strategies, by which it has sought to regain control, have been markedly ineffective. Heinz and Laumann (1983) also offer evidence of professional transformation and decline by describing the increasingly sharp division of the metropolitan bar into mutually exclusive subgroups based on function, income, ethnicity, and education. The rapid shift from private practice to employment in both the public and private sectors may be further evidence of departure from the professional ideal, in which members exercise control over the terms and conditions of their work (Abel, 1981: 1159–1160). Similar trends toward a loss of both market control and autonomy have been observed in medicine, although the causes of deprofessionalization differ (Coburn et al., 1983; McKinlay & Arches, 1985).

If the theories of Freidson, Larson, and Abel are to have general explanatory value, they must be able to accommodate contexts other than the American experience from which they were primarily drawn. Can a theory of the political economy of the professions transcend national boundaries? Local political forms, culture, economic circumstance, and social organization, and especially the notorious parochialism of formal law, all would seem to argue against this. Canada's transformation from an agrarian colony to a modern industrial nation during the formative period of professionalism especially might be expected to yield a distinctive pattern, unlike that of the two countries that most influenced its professional history—England and the United States. Given these considerations, the wonder is not that the Canadian experience seems to invite modification of the "professional project" thesis but rather that it seems generally to confirm it.

TERMINOLOGY

In general parlance, legal practitioners everywhere in Canada are called "lawyers" ("avocats" in Quebec). The historical distinction between barristers and solicitors no longer has any functional significance (see, e.g., Law Society Act, Rev. Stat. Ontario 1980, c. 233, s. 28; Barristers and Solicitors Act, Rev. Stat. Nova Scotia 1967, c. 18 ss. 3–5; Barristers and Solicitors Act, Rev. Stat. British Columbia 1979, c. 26, s. 42). In Quebec "notaires" are concerned with the formalization, authentication, and preservation of title documents, wills, and other legal instruments.[1] Lawyers who perform adjudicative or regulatory functions may suspend or terminate their formal professional membership and will be referred to thereafter as judges, members of a board or commission, and so on.[2] A purely honorific title, "Queen's Counsel," has been awarded to a rather large number of lawyers in some provinces, (such as Ontario), and fewer in others. It does not signal

preeminence in advocacy (as it does in England) but merely some degree of seniority and professional or public repute—if anything.[3]

Lawyers perform a variety of tasks, many of which require little or no specialized training but are functionally related to others that do (Colvin, 1979; Macfarlane, 1980; Colvin et al., 1978). The two historic functions of lawyers, conveyancing and litigation, have acquired an extended meaning. For Canadian lawyers, the modern analogue to "conveyancing" is the practice of commerical law, which includes the negotiation, drafting, and interpretation of commercial documents; advising and planning for commercial transactions; corporate and tax planning; and general business and political advice. Lawyers also advise individual, nonbusiness clients about family relationships, financial affairs, dealings with government over pensions, and other benefits and employment contracts.

"Litigation" in the strict sense includes representation of parties in a dispute that will be adjudicated by a court. It now also encompasses representation before government regulatory regimes, interpretation of existing legislation, attempts to change legislation, and contacts with the media.

A small but growing group of lawyers is concerned with the "scientific jobs" in law. These include not only legal academics but also employees of government departments, law reform commissions, research staffs of corporations and community groups and specialist researchers in large law firms. Finally, some lawyers are deeply involved in political and administrative functions that seldom engage the skills employed by those in private practice. Corporate and governmental administrators, lobbyists, journalists, and elected officials are found along the broad spectrum of these "nonlegal" occupations.

The more attenuated the connection with the original knowledge base of lawyer functions, the more likely it is that nonlawyers will be important actors in the same field (Colvin, 1979; Quinn, 1978; Evans & Trebilcock, 1982); thus, business advice often involves accountants. Lay persons are advocates in many tribunals not mandated to administer conventional legal rules. The development of "legal science" increasingly attracts the participation of economists, sociologists, scientists, and philosophers. Lawyers are not even dominant in public policy development and administration (Marmour & White, 1978; Ronson, 1978; Altman & Weil, Inc., 1980).

In matters more closely related to conveyancing and litigation, however, lawyers tend to assume an exclusive or dominant role. "Law clerks" or "legal assistants" typically work under the supervision of qualified lawyers (Taman, 1978; Zemans, 1982). Sometimes they are given considerable latitude in preparing routine documents and prosecuting legal proceedings, especially in minor matters (see table 1). "Community legal workers," "lay advocates," or "paralegals" perform analogous functions in legal aid offices (Gold, 1978; Thomasset, 1981; Taylor, 1981; Zemans,

1982).[4] Typically, however, the latter enjoy rather greater autonomy, particularly in areas such as community mobilization and legal education. Neither "law clerks" nor "community legal workers" need have any particular training or formal credentials, although courses and training programs are available (Marmor & White, 1978; Ronson, 1978).[5]

Accountants, trade union representatives, and others do have limited rights of audience in certain forums,[6] and they may negotiate, draft, and interpret certain legal documents as long as they do not engage in the "practice of law." Their activities typically involve immigration, labor relations, social welfare, and landlord–tenant problems, but they also extend to taxation, estate planning, and the financial and corporate transactions of middle-class and corporate clients. In some jurisdictions, patent attorneys or patent agents may practice industrial property law (Patent Act, Rev. Stat. Canada, 1970, c. 203, s. 15), "conveyancers" perform title searches and related functions (Trebilcock & Reiter, 1982: 101), notaries public and *notaires* authenticate documents, and commissioners swear affidavits (Schloesser, 1979).

SOCIOGRAPHIC DATA AND SOCIAL POSITION

NUMBERS

The following data describe lawyers who are licensed to practice, but an increasing proportion of those who obtain a professional qualification do not enter private practice. In Ontario, the most populous province, the proportion of graduates entering private practice declined from 86 percent to 70 percent over a period of about ten years, while the number of qualified lawyers doubled (Law Society of Upper Canada, 1983*b*).

In 1982 there were about 39,000 lawyers in Canada (including Quebec notaires) (Canadian Law List, 1983). This represents significant growth since the mid-1960s as well as a significant decline in the ratio of population to lawyers. In Ontario, the ratio fell from 1,142 in 1960 to 574 in 1981 (Law Society of Upper Canada, 1983*b*: 227). Between 1931 and 1981 the number of lawyers expanded much more rapidly (278 percent) than that of physicians (183 percent) or dentists (123 percent), although slightly less rapidly than that of architects (309 percent).

These changes seem to have resulted in part from a demographic anomaly. The low numbers entering the profession in the 1940s and 1950s produced equally low numbers of retirements and deaths in the 1970s and 1980s. The birth rate peaked at 27.6 live births per 1,000 population

between 1956 and 1960 and then declined to a low of 15.5 in 1977. The combination of these two factors amplified the drop in the ratio of population to lawyers. There was little change in the popularity of law studies among university students, however: They attracted 2.2 percent of total enrollment in 1962 and 2.9 percent from 1973 to 1983 (Consultative Group on Research and Education in Law, 1983). Nonetheless, because the changes occurred after a protracted period of stability (Stager, 1982), they have come to be perceived (especially in professional circles) as unprecedented. In fact, they seem to be part of a long-term trend in which episodes of rapid expansion alternate with lengthy periods when the supply remains constant or contracts (Nelligan, 1950; 1951).

REGIONAL DISTRIBUTION

Two provinces contain nearly two-thirds of all Canadian lawyers; three contain nearly four-fifths (see table 2). Lawyers are clustered in the most economically advanced and densely populated parts of the country and in government centers (Berger, 1979). Winnipeg contains almost 80 percent of Manitoba lawyers, and Edmonton and Calgary combined contain more than 80 percent of Alberta's lawyers, although only half of the population (Statistics Canada, 1981). Toronto, a provincial capital and the commercial center of the country, located in the midst of the industrial heartland, contains about 10 percent of the population but about 25 percent of all lawyers. Conversely, small towns in remote areas often have few lawyers and almost certainly a much higher ratio of population to lawyers than is found in the major metropolises.

DEPLOYMENT WITHIN THE PROFESSION

There also are considerable differences between metropolitan and nonmetropolitan practice and even between the city core and suburbs (Berger, 1979; Mullagh, 1977; Snider, 1981; Colvin et al., 1978). General practitioners predominate outside metropolitan centers (Berger, 1979; Ribordy, 1982*a*: 83). This is partly because there are too few people to support specialization and partly because specialists tend to perform services on behalf of governments, corporations, and other institutional clients, whose head offices often are located in the larger cities. Almost all medium-sized and large law firms are located in the central business and financial districts of the larger cities. Lawyers catering to a "household clientele" tend to be found increasingly in suburban shopping precincts and in storefronts in

working-class and ethnic districts (Colvin et al., 1978: 25–220). Outside the central business districts, small firms and solo practitioners predominate (Arthurs et al., 1971; Berger, 1979).

Identifiable subgroups of lawyers outside private practice have emerged recently. While there were only some 40 law teachers in all of Canada as recently as 1950, the number now has grown to over 650 (Consultative Group on Research and Education in Law, 1983: 30). Government lawyers working at the municipal, provincial, and federal levels have experienced a similarly dramatic increase in numbers. The Province of Ontario employed approximately 6 lawyers in the Ministry of the Attorney General in 1945; by 1981 the ministry's head office employed 150 and local Crown attorneys' (prosecutors') offices another 500 (Leal, 1982). In the later year, 1,098 out of 15,011 Ontario lawyers were employed by various levels of government (Stager, 1981). Community clinic lawyers in Ontario increased from 18 in 1976 to 60 in 1983 (Zemans, 1980). Across the country legal aid services employed 534 lawyers in 1979/80 (National Legal Aid Research Centre, 1980/81). Corporate staff lawyers (sometimes called "house counsel") have expanded their numbers greatly, especially in the past ten years (Feltham & Campin, 1981). Finally, several hundred lawyers work for community groups, trade unions, legal aid or legal services schemes, and advocacy organizations such as the Environmental Law Association or the Civil Liberties Association—forms of practice that were almost nonexistent fifteen years ago.

THE NUMBERS DEBATE

The relatively rapid increase in the number of lawyers admitted to practice, especially during the past five to ten years, has produced a widespread conviction among members of the bar (and some members of the public) that there are "too many lawyers."[7] In the absence of any other standard for measuring the appropriate number of lawyers, this belief typically is supported by reference to the alleged stagnation or decline in lawyer incomes in recent years. It is by no means clear how incomes have been affected by rising numbers, however. In fact, with considerable variation by type of practice, seniority, clientele, and location, Canadian lawyers have managed to maintain their relatively advantaged position (Altman & Weil, Inc., 1982; *Financial Post* 20 [20 November, 1982]). And to the extent they have not done so, the cause appears to be recent reversals in Canada's economic fortunes (Stager, 1982: 116–118; Ribordy, 1982*b*; 1983). During a period in the early 1980s when the economy was running considerably under capacity, unemployment in many industries was high, real estate and

other commercial markets were depressed, and business expansion was negligible, it was not surprising that lawyer incomes would suffer.

Fluctuation in lawyer incomes is difficult to measure. Average annual incomes may, indeed, have remained relatively stable, which would signify an actual decline after adjusting for inflation; however, this may be attributable to the large influx of relatively low earning recent graduates. There is no evidence that the real earnings of senior "elite" lawyers have suffered. On the contrary: for reasons that will be discussed below, the present economic situation may well have amplified existing disparities, to the prejudice of new entrants, solo practitioners and small firms, lawyers serving a "household clientele" or legally-aided clients, and salaried lawyers (see table 3).

A second ingredient in the "numbers debate" is the allegation that incompetence has increased (Yachetti, 1983). Because lawyers must cut prices to compete, it is argued, they also will trim the quality of service provided. Moreover, lawyers whose traditional sources of business (e.g., real estate transactions) have diminished will be tempted to try types of legal practice (e.g., criminal law) in which they are not experienced. These allegations remain unsubstantiated. While the latter suggestion seems plausible, the former is at odds with the fact that the recent significant increases in claims for incompetence result from the activities of experienced lawyers and from errors committed by them during a period of considerable prosperity (Law Society of Upper Canada, 1983*b*). Indeed, one commentator has argued that too few lawyers trying to satisfy too much demand also may produce incompetent performances (Stager, 1982: 33–34).

Regardless of the facts, it is undeniable that many lawyers favor limiting entry (Yachetti, 1983: 105). However, it is by no means clear that the profession possesses the power to give effect to this view. While the applicability of antitrust legislation to the legal profession is uncertain (Hunter, 1983), any attempt by the bar to restrict numbers probably would result in considerable public outcry (Law Society of Upper Canada, 1983*b*: 234, 238). Governments facing financial constraint might be willing to trim the number of graduating law students in order to save both the cost of legal education and claims on legal aid funds, however, since younger lawyers rely more heavily on such work (Berger, 1979: 49–50).

Finally, the impact of market forces has been felt most severely by recent graduates, who have suffered periods of unemployment or been displaced into nonlegal careers in business, government, or elsewhere (Stager, 1982; Zemans, 1986; Consultative Group on Research and Education in Law, 1983). At present, however, law schools continue to enjoy a vast surplus of highly qualified applicants for the limited number of places.

CONNECTIONS WITH OTHER INSTITUTIONS

Legal Connections

Lawyers generally identify closely with, and tend to support, legal institutions such as the courts and organizations such as the Bar Association; however, judges may inspire deference or criticism (or both) rather than close collegiality. Law professors may consider themselves as either critics of "the system" or deferential to authority (Laskin, 1972). In addition, government officials, legal aid and clinic lawyers, tribunal members, and other lawyers employed by nonlegal employers are exposed to centrifugal influences by virtue of their identification with the institutions or organizations where they work.

Nonlegal Connections

Some specialist practitioners maintain close connections with other professions with which they collaborate. For example, physicians and lawyers comprise the membership of the Medical-Legal Society (MacEachern, 1976), and lawyers and accountants belong to the Canadian Tax Foundation. Much more common, however, are the involvements of lawyers with their business clients because of annual retainers (sometimes reflecting decades of close association), the acceptance of directorships, participation in active management, and partnerships or coventure arrangements. Lawyers also often serve as lobbyists, informal intermediaries, and a responsive audience for their business clients (Clement, 1975*b*; Gall, 1977; Pike, 1980; Adam & Lahey, 1981).

Lawyers maintain connections with political parties, religious and ethnic groups, and special-interest groups such as consumers' associations, credit unions, and conservation and civil rights organizations. While this sometimes may be motivated by a desire to attract business, it often reflects a genuine and intense involvement in the cause espoused by the organization. Lawyers constitute important links among the widest variety of institutions, social sectors, and political perspectives. Indeed, this "linkage" function may be seen as divided loyalty, which may help to explain why lawyers so often are viewed with suspicion by the nonlawyers with whom they are associated.

LAWYERS AND POLITICS

Lawyers are extensively involved in politics (Pasis, 1970; Jackson & Atkinson, 1980; Goodman, 1971; Porter, 1965). Between 1930 and 1985, six

of the nine prime ministers were lawyers (including one, Pierre E. Trudeau, who was a law professor). Together they held office for thirty-five of the fifty-five years. Significant numbers of federal cabinet ministers, provincial premiers and cabinet ministers, and legislators have been lawyers. While the proportion of elected officials who are entrepreneurs, teachers, and members of other occupations is increasing, lawyers remain vastly overrepresented in all Canadian political contexts. For example, 25 percent of the members of the federal House of Commons were lawyers in 1983, a higher proportion than in the British Parliament (17 percent in 1974) or the German Bundestag (5 percent in 1972) (Canadian Parliamentary Guide, 1983; Jackson & Atkinson, 1980: 156). Survey evidence indicates that a majority of the public prefer legislators who are lawyers (Samac, 1985). Moreover, politics is more easily combined with law than with other careers (Porter, 1965: 393).

Lawyers also are deeply involved in party politics as campaign managers, policy advisers, and strategists. They have not dominated senior policy positions and administrative positions in government, however, with two exceptions: (1) administrators performing adjudicative functions frequently are lawyers; and (2) Royal Commissions, often used in developing major policy initiatives, tend to be chaired by serving or retired judges.

PUBLIC ATTITUDES TOWARD THE LEGAL PROFESSION

The public is ambivalent toward lawyers. On one hand, it views them as untrustworthy; on the other hand, it respects Supreme Court judges; and those who have used lawyers' services are very satisfied; (Yale, 1982; More, 1982; but see Moore, 1980). There is ample literary evidence that Canadians dislike legalism, the aggressive and obfuscatory style of lawyers, and their apparent influence (Robins, 1971; Farris, 1972). Canadians also view themselves as law-abiding; they recently adopted a constitutional Charter of Rights and Freedoms (Russell, 1982; Arthurs, 1984), and they are quick to assume that "there ought to be a law" to deal with perceived social, economic, and even cultural problems.

In one important respect, however, Canadian lawyers have at least avoided attracting public censure, if they have not won public approbation. The introduction of legal aid in Canada proceeded without significant professional opposition, even with professional acquiescence and occasional support. In some provinces, the profession advocated the establishment of legal aid in order to win the right to administer the plan. By contrast, the medical profession resolutely opposed the introduction of medical insurance and has continued to criticize it, seek ways of working outside it, and encourage public opposition to the notion of "state medi-

cine." Ironically, none of these maneuvers appears to have damaged public admiration for, and trust in, physicians.

THE DEMOGRAPHIC BACKGROUND OF LAWYERS

SIGNIFICANCE

Canada is a country of considerable ethnic diversity, especially since World War II (Richmond, 1967). Whereas members of ethnic minorities and disadvantaged groups in the United States gained entry to the profession through unaccredited, low-status, part-time law schools, no such route existed in Canada. In most provinces, there was—and is—only a single law school (two at most) rather closely identified with the provincial professional body. Full-time legal education became universal in Canada after World War II, largely as a result of pressure from within the academic community striving to improve standards, rather than (as has been suggested in the United States) (Auerbach, 1976) as a result of professional attempts to preclude entry by unwanted minorities (Bucknall et al., 1968; Laskin, 1983). There is no obvious national hierarchy of schools, however, although some are favored by geographic location or historical circumstance (Adam & Lahey, 1981: 685). Most students attend law school in their home province or in the nearest province with a law school and, once called to the bar, rarely move to another province to practice law (see table 4). There is, therefore, no Canadian counterpart to the American elite law schools, whose graduates may clearly be identified by their social backgrounds or professional careers.

AGE

Because various Canadian provinces offer eleven, twelve, or thirteen years of primary and secondary education and because various jurisdictions require from two to four years of prelaw university education, the age for beginning law studies varies considerably. Every province requires a three-year law degree, however, together with some period of service under articles (apprenticeship). In addition, most provinces require systematic practical instruction in law, either contemporaneous with, before, or after articling. The minimum age for entry to practice thus is between twenty-four and twenty-seven. Indeed, since most law students have at least a first degree in some other field, many have pursued graduate studies in other disciplines or other careers, and some undertake graduate studies in law before entering practice, the actual age of entry is much higher than the

minimum (McKennirey, 1983: 124; Levy, 1972: 12, 23–25; Huxter, 1981). Still, the rapid growth of the profession recently has rendered it much more youthful (see table 5).

GENDER

Although Canada was the first country in the British Empire to admit women to legal practice (in 1896) (Harvey, 1970), the number of women in law school remained minuscule until about 1970. Women now constitute 35 percent of new entrants in most jurisdictions (Berger, 1979; Zemans, 1986: 20–21; McKennirey, 1983: 3) and 15 percent of all lawyers (see table 6).

As a result of conscious effort, women have been appointed in increasing numbers to law faculties, boards, commissions, and courts (including the Supreme Court of Canada, which now has its first female puisne judge). They rose from 4.4 percent of full-time law teachers in 1971/72 to 14.2 percent in 1982/83; however, they still are not well represented in the elite of the legal profession (Guppy & Siltanen, 1977; Huxter, 1981; Adam, 1981). Male judges and magistrates outnumbered female by more than eight to one in 1981—more than nineteen to one on the federal bench. Nor are women found in proportionate numbers in all types of practices.

ETHNICITY

There is a clear preponderance in the legal profession of members of the well-established charter groups: French Catholics in Quebec and English Protestants in the rest of Canada (Adam & Lahey, 1971; Arthurs et al., 1971: 500 ff.; Cadres Professionels, Inc., 1968). Some of the more established immigrant groups have managed to achieve significant representation within the profession on a local or regional basis, however, sometimes far in excess of their numbers within the general population—English Protestants in Montreal and Jews in several metropolitan centers. Children of newer immigrant groups, such as Italians and Ukrainians, also are beginning to appear in discernible numbers. Some of the most recent arrivals, such as West Indians and Asians, Portuguese and Greeks, still are significantly underrepresented, and despite conscious efforts to recruit and support native law students, their numbers remain very small (University of Saskatchewan Native Law Centre, 1981). Students from non-metropolitan areas doubtless end up practicing law in the largest cities, while relatively few seem to migrate in the opposite direction.

CLASS

Historically, law has claimed to be an "open profession." Indeed, one of its functions (reflected in the early requirements) may have been the recruitment, socialization, and certification of members of an incipient "new upper class" of considerable importance in colonial society (Baker, 1983; Smith & Tepperman, 1974).

For at least the past generation, however, entry into the legal profession, and especially access to its most prestigious positions, has been enjoyed disproportionately by individuals from professional families and other privileged socioeconomic groups (Arthurs et al., 1971; Levy, 1972; Lajoie and Parizeau, 1976; Adam & Lahey, 1981). Indeed, entry into the professions generally, and into other elites, has not been significantly democratized, largely because recent immigrant groups, the poor, and other disadvantaged minorities have been unable to overcome educational and financial barriers (Clement, 1975*b*; Porter, 1965; Newman, 1975). These barriers have been raised by increasing competition to enter law school since the 1960s and by the more recent downturn in the Canadian economy. Individuals from disadvantaged circumstances are found in diminishing numbers as one ascends the educational ladder (Porter, 1979; Cuneo & Curtis, 1975). Costs have risen as well: law school fees ranged from Can$340 to Can$625 in 1966/67 but were between Can$808 and Can$1,615 in 1984/85.

Many law schools have sought to admit mature students who have not attended university, native peoples, and other qualified individuals whose credentials may have been adversely affected by social or economic circumstances (McKennirey, 1983). Within the profession, meritocratic criteria have enabled some highly qualified individuals to attain legal positions from which they previously would have been excluded.

STRATIFICATION WITHIN THE PROFESSION

White Anglo-Saxon Protestant males are overrepresented in large corporate law firms, not only in English Canada but also in the predominately French city of Montreal, and Jews, Catholics, members of ethnic minorities, and women are underrepresented (Adam & Lahey, 1981; Arthurs et al., 1971: 516–518). There is a tendency toward ghettoization, however, especially within the "household sector" of legal practice. "Ethnics," particularly Jews, have tended disproportionately to practice in such areas as criminal law, real estate, service to small businesses, and domestic relations (Colvin et al., 1978; Arthurs et al., 1971: 512–513, 517).

STRUCTURE OF THE LEGAL PROFESSION

HISTORY

The history of the legal profession differs considerably from province to province; the civil law jurisdiction of Quebec is the most obvious special case (Lortie, 1975; Sinclair, 1975; Lachance, 1966; Buchanan, 1925). During the early period most of the very few lawyers were foreign trained. Some came directly from the United Kingdom, some were loyalist emigrés from postrevolutionary America, and others (especially judges and law officers) served in Canada before or after other colonial postings (Parker, 1982; MacAlister, 1928; Riddell, 1928).

In the older colonies such as Nova Scotia and Upper Canada (Ontario), local professional bodies soon assumed regulatory functions in imitation of the English Inns of Court, acting sometimes under statutory mandate and sometimes under executive control and direction (Johnston, 1972; Smith, 1948; Riddell, 1928; MacAlister, 1928). When there were few trained lawyers available, a considerable amount of legal business was conducted by nonqualified functionaries such as conveyancers and notaries (Gibson & Gibson, 1972). Throughout the nineteenth century, however, the profession gradually asserted its monopoly (Newman, 1974; Orkin, 1971; Hawkins, 1978; Cole, 1983). Yet as late as the midtwentieth century, lay magistrates were being appointed in Ontario, the most heavily urbanized and legally most advanced of the common law jurisdictions.

The professional body in each province, often called the "Law Society," exercised licensing functions, set standards of admission and professional conduct, and disciplined misconduct. It also retained active control of legal education until the late nineteenth century and dominated it thereafter by the joint or sole proprietorship of law schools, specification of formal educational requirements, and informal articulation of what lawyers "ought to know" (Bucknall et al., 1968; Laskin, 1983; Baker, 1983: 68).

The "numbers problem" first surfaced in the 1830s and 1840s, when lawyers and others complained about overproduction in Upper Canada. Until the midnineteenth century, law was a relatively "open" profession, in which lax standards of entry (several years of apprenticeship) posed no serious obstacles. Thereafter, more rigorous educational requirements alternated with periods of relative (even total) laxity, reflecting divergent views about whether the Law Society should pursue its project of professional socialization through formal or informal, centralized or decentralized, training schemes.

From the end of the nineteenth century, Law Societies (outside Ontario) exhibited declining interest in legal education. In many jurisdictions they gradually ceded to the universities responsibility for formal instruction in

law, but everywhere they retained control over entry through a required period of apprenticeship. These changing educational requirements had, and sometimes were perceived to have had, an adverse impact on access to the profession by poor students, those from outlying areas, and foreign lawyers who had emigrated to Canada (Baker, 1983; Bucknall et al., 1968). During the Great Depression this impact was considerable, especially since it coincided with the general impoverishment of universities.

In the years following World War II, however, provincial law societies have been involved only marginally in providing basic legal education (Laskin, 1983: 153; Arnup, 1982; Bucknall et al., 1968). Today, professional associations focus on three matters: (1) "practical" professional education immediately prior to admission and on a continuing basis thereafter; (2) regulatory functions, especially those connected with the protection of client funds and other aspects of lawyer honesty and, to a lesser extent, those directed toward maintaining intraprofessional relations; and (3) public functions, including the management of legal aid schemes, dissemination of public information about law, protection of the professional monopoly, and lobbying on behalf of the legal profession.

THE SCOPE OF PRACTICE

The right to define the scope of practice is no less valuable a prerogative in protecting the professional monopoly than is the regulation of entry. The Canadian legal profession uses the same device as its counterpart in the United States, namely, statutory provisions against unauthorized practice. Until recently, the clear trend has been to extend the jurisdictional claims of lawyers across a wide spectrum of practice situations—from advocacy to the preparation of documents intended to have legal effect and ultimately to legal advice (Davies, 1952: 25; Orkin, 1957: 248–253; see, e.g., Law Society Act, Rev. Stat. Manitoba 1970, c. L100.5.48 [2] [7]. The fact that most statutes permit people to act on their own behalf or as unremunerated agents does little to dispel the suspicion that restrictions on practice have less to do with protecting consumers than with protecting markets.

Certain exemptions or limited rights to "practice" have been granted, explicitly or by acquiescence, to occupations that could not function if the statutory provisions were enforced literally. Some provinces exempt insurance claims adjusters and real estate agents as long as they function within narrowly defined limits; others allow public officials to draft legal documents (e.g., Legal Profession Act, Rev. Stat. Alberta 1980, c. L-9, s. 93 [2] [a]; Barristers and Solicitors Act, Rev. Stat. British Columbia 1979, c. 26, s. 1; see Colvin et al., 1978). Provincial statutes authorize the appearance of "agents" before small claims courts and administrative agencies (e.g., Statu-

tory Powers Procedures Act, Rev. Stat. Ontario 1980, c. 484; Rules of the Provincial Court, Ontario Leg. 797/84). And federal legislation allows lay representation in minor criminal matters (Criminal Code, Rev. Stat. Can. 1970, c. C-34 s. 735). Rights of audience are widely exercised by trade union officials before labor boards, accountants before taxation tribunals, and more generally by law clerks and articled students (apprentices) employed by law firms.

In "gray areas" that the monopoly does not clearly reach, explicit jurisdictional understandings ensure due regard for professional interests. Trust companies thus are allowed to draw wills, provided they are "reviewed" by private practitioners, and community clinics may dispense legal advice and service in less important matters through law students and lay advocates, if significant remunerative work is forwarded to qualified private practitioners.

Judicial interpretation of jurisdictional statutes also has tended to enlarge the protected scope of professional practice. The preparation of papers for probate, the drawing of wills, the drafting of legal documents by a collection agency, applications for incorporation, and the processing of uncontested divorces all have been designated "unauthorized practice" when performed for gain by a nonlawyer, even in the absence of compelling statutory language (e.g., *R.* v. *Engel and Seaway Divorcing Service* [1974], 11 O.R. [2d] 343). A recent ruling appears to set some limits on the legal monopoly, however, by requiring that activities be reserved to lawyers only if it can be demonstrated that the public otherwise would be placed at risk (*R.* v. *Nicholson* [1979], 96 D.L.R. [3d] 693 [Alta. C.A.]).

Legal action against "unauthorized practice" typically is initiated by law societies, which usually intervene at the request of a member. There is some indication that the adverse market conditions of the late 1970s and early 1980s are reflected in an increasing number of complaints received by the unauthorized practice committees of professional bodies. In Ontario, for example, ten to sixteen complaints were received annually between 1968 and 1973; during the next eight years this increased to thirty-five to ninety per year (Professional Orgnaizations Committee, 1980: 242). It should be noted that most complaints are either diverted or negotiated. Very few lead to actual prosecution. Because of the transparent element of professional self-interest, an Ontario commission recently recommended that no prosecution for unauthorized practice be commenced except with the written consent of the attorney general of the province (ibid.).

PROFESSIONAL AUTONOMY AND PUBLIC ACCOUNTABILITY

Despite the success of provincial Law Societies in dominating the market for legal services, the professional hegemony of Canadian lawyers has not

gone entirely unchallenged. Both the demand from professional groups that provincial legislatures mediate jurisdictional disputes and attempts by several occupational associations to secure certification or licensure regimes have caused governments to reevaluate their policies toward the professions in general. Moreover, governments have been increasingly responsive to appeals from consumer groups for greater accountability by the professions. Although public debate has focused on the organization and financing of the health occupations, the position of the bar in the division of labor also has been examined by several governmental commissions and inquiries over the past fifteen years (Royal Commission Inquiry into Civil Rights, 1968; Commission of Inquiry on Health and Social Welfare, 1970; Economic Council of Canada, 1969; Professional Organizations Committee, 1980).

No province has gone further than Quebec in modifying the relationship between the state and the professions. In 1973, several years after a provincial Royal Commission spoke extensively to the issues, Quebec enacted a Professional Code, which formally expanded public control over all professional groups, including the bar, far beyond the controls prevailing in other provinces (Stat. Quebec 1973, c. 43). The central innovation is the organization of all professions into corporations with parallel mandates and the subordination of these corporations to an overarching provincial Professions Board, all of whose members belong to some profession but are appointed by the provincial cabinet. The board ensures that each profession fulfills its statutory obligations, approves regulations proposed by the professions, including fee schedules, and publishes decisions in disciplinary cases. A provincial Professions Tribunal hears appeals from the disciplinary tribunal of each body. Although other provinces have rejected these changes on the ground that they threaten the independence of the bar, there is little to justify this fear (Issalys, 1978; Pepin, 1979; Arthurs, 1982).

A much more typical response to demands for professional accountability has been to leave the bar's historic governing structures essentially intact while engrafting additional elements designed to provide the public symbolic reassurance but no real control (Arthurs, 1982). The experience of Ontario is instructive (Arthurs, 1971). Responding to the recommendations of a Royal Commission of Inquiry, the Ontario legislature in 1970 created a "Law Society Council," composed of representatives of the profession's governing body and other legal "estates" as well as some public members and charged with reporting to the legislature annually about how the profession discharged its public responsibilities. Lacking a fixed agenda, its own secretariat, and public members with identifiable constituencies, the council soon ceased to function. In its place, the legislature mandated the direct appointment of four lay members to the govern-

ing body (about 10 percent of its membership). Hostages to fortune, and no more influential than their individual exertions and talents dictate, these lay members have largely deflected public demand for further state control of the profession without actually providing any effective means of enforcing public accountability. Similarly, a statutory admonition that the provincial attorney general (an ex officio member of the governing body) should serve as guardian of the public interest has had little practical result.

Lay membership of local and provincial legal aid committees does seem to give some support and direction to attempts to provide legal services to the poor. Public accountability seems to depend on episodic pressure from a variety of external sources, however: a Royal Commission or legislative committee investigating some aspect of professional practice or governance; newspaper editorials or legislative debates signaling concern with the bar's policies; occasional threats of investigation or prosecution by the combines (antitrust) authorities; or adverse comments on the behavior of lawyers or law societies by judges, in the course of litigation or extrajudicially.

Given the relatively nonintrusive and sporadic nature of these criticisms and demands for accountability, it is difficult to see much connection between the profession's virtual obsession with "independence of the bar" and any real threat. Rather, the shibboleth of independence is a central premise of professional ideology, pronounced for internal consumption more than to persuade an external audience.

REGULATION OF ENTRY

Except for a few local idiosyncracies concerning subject requirements, everyone with a basic credential (LL.B.) from any Canadian Law school may complete the professional requirements for admission in any Canadian jurisdiction (other than Quebec, which has a civil law system). For at least twenty years, emphasis has been placed on the "portability" of law degrees among Canadian jurisdictions (Murray, 1979; Berger, 1979: 41), although this is subject to several practical restraints.

First, "portability" applies only at the moment of graduation from law school. The interprovincial mobility of practitioners has been inhibited by various measures designed to discourage either transfers or simultaneous practice in several jurisdictions (Murray, 1979). The recent enactment of a constitutional guarantee of "occupational mobility" (Canadian Charter of Rights and Freedoms, s. 6[2]), however, coupled with the first appearance of "interprovincial" law firms, may alter this position (Clarry, 1982).

Second, even though LL.B. degrees are "portable" in principle, attempts have been made to encourage employers to fill articling positions with

graduates from inside the province. These have been only partially successful because firms wish to hire the best available candidates.

Third, those without Canadian credentials obviously do not benefit from this arrangement. Holders of foreign degrees find it very difficult to requalify in Canada and almost always must complete further formal education, as well as professional training. The requirement that all entrants possess Canadian citizenship recently was challenged unsuccessfully on constitutional grounds (*Re Skapinker* [1984], 9 D.L.R. [4th] 161; see Lenoir, 1981).

It might seem possible to control entry by regulating the number of articling positions, and such restrictive practices may, indeed, exist in small communities; however, most Law Societies have undertaken to secure articles for all local graduates. Likewise, except for a few well-publicized and atypical instances, Law Societies have not attempted to restrict entry by ensuring artificially high failure rates on bar admission examinations (Bowlby, 1982). The pass rate for the Law Society of Upper Canada's Bar Admission Course was 98 percent in 1973 and 99 percent in both 1979 and 1985.

In general, then, entry into the profession is effectively determined by the award of an LL.B. degree. Indeed, because Canadian law schools have a very low failure rate (due to the high entry standards) (Browning, 1976), acceptance to an LL.B. program virtually ensures ultimate admission to practice.

Although professional bodies may exert influence on governments that financially support university law programs, or even on the policies of law faculties themselves, they do not ultimately control law school admissions. Canadian law schools experienced very considerable growth from the mid-1960s through the mid-1970s (see table 7; also Consultative Group on Research and Education in Law, 1983: 25). Existing faculties expanded greatly, and new schools were opened. Nevertheless, law students constituted about the same proportion of postsecondary students at the end of the period as at the beginning.

Factors inhibiting the further growth of law faculties lay largely outside professional control. Law schools were reluctant to grow because of the difficulties of recruiting and retaining teachers, unfavorable student-faculty ratios, and inadequate financial support. Despite the fact that declining birth rates might have been expected to reduce the number of applicants for admission to law school by the early 1980s, fierce competition persists, with the ratio of applications to available places running between 5 : 1 and 10 : 1 (see table 8).

The unanswered question, however, is the extent to which law schools have internalized professional assumptions and values, unconsciously responding to the widespread desire of lawyers to limit growth during a

period of economic contraction (Consultative Group in Research and Education in Law, 1983: 42). In Ontario, this desire was manifest in the response to a 1981 survey conducted by the Law Society, in the creation in 1983 of an Ontario Lawyers' Association overtly committed to limiting numbers, and in the prolimitation rhetoric of most candidates seeking election to the profession's governing body in the 1983 quadrennial election.

This pressure was resisted at several points, however. Professional governing bodies disclaimed authority to restrict numbers and, fearing legal and political repercussions, were reluctant to seek necessary statutory changes. These governing bodies, moreover, generally are dominated by established practitioners who are less exposed to fluctuations in the economy and thus can afford the luxury of taking a principled stand in favor of the play of market forces. Since the level of government support for legal education is indirectly linked to enrollment, law faculties understandably are reluctant to consider entry controls.

In any event, restriction of entry is unlikely significantly to alleviate economic problems within the profession in the absence of a strategy to redeploy existing or future practitioners to areas of potential demand (Stager, 1982: 134). The effect of market forces already is being felt. The number of lawyers in private practice is growing more slowly, and many new graduates (and some established practitioners) have been diverted into new areas of activity, such as legal aid (Berger, 1979: 18, 49, 50), and especially into nonpractice roles in business, government, and elsewhere. Between 1971 and 1982 the proportion of Ontario lawyers in private practice declined from 86 percent to 71 percent (Law Society of Upper Canada, 1983*b*: 227).

PROFESSIONAL ASSOCIATIONS

Voluntary Organizations

Canadian Bar Association. This is the only national body of Canadian lawyers. It is organized into provincial branches whose membership ranges from the entire practicing bar in some provinces (as a result of compulsion) to a rather lower level in Quebec (because notaries are excluded). The Canadian Bar Association (CBA) performs many of its functions through special sections organized around areas of professional practice such as labor relations, estate planning, and taxation or around special interests such as legal education. The function of these sections is largely educational but also includes participation in law reform and the expression of views on matters of public concern or professional interest. The CBA thus expended considerable effort and funds in recent national debates over

constitutional changes (CBA, 1978). It also has adopted relatively liberal resolutions on such matters as capital punishment, abortion, search and seizure, and the rights of prisoners and the disabled; however, the CBA regularly endorses modestly conservative positions on taxation and government regulation of the economy. Understandably, the organizational behavior of the CBA and its ideology and formal public positions all seek to advance professional interests and values, although pronouncements often are couched in terms of public contribution and responsibility (Mackimmie, 1963).

In addition to these functions, the CBA traditionally has provided important social links, although these probably are diminishing as the profession expands, diversifies in functions, and stratifies in terms of social background and economic rewards. More important, in recent years, have been services to members, including insurance and pension schemes and advice on law office management.

Local Lawyers' Clubs. Most communities in which lawyers practice have at least one organization whose membership is open to all local practitioners. Almost all are devoted to parochial interests, such as social activities, seminars, and the provision of a local law library.

At least before recent amendments arguably made antitrust legislation applicable to legal services (*A.G. Canada* v. *Law Society of British Columbia* [1982], 137 D.L.R. [3d] 1 [Sup. Ct. Can.]), it was quite common for local law associations to adopt minimum fee tariffs for standard transactions and services. In Ontario, 1 percent or 1.25 percent commonly was charged the purchaser or the vendor for conveying a house. Such tariff arrangements apparently still are enforced in small communities by social pressures. Local organizations also may engage in restrictive practices, such as agreeing not to employ articling students in order to limit competition.

As the legality of these arrangements has been challenged (Henderson, 1977; Posluns, 1980), local law associations have turned from direct attempts to control prices to efforts to persuade provincial governing bodies to restrict entry and to adopt legally binding fee tariffs, breach of which would lead to disciplinary sanctions.

Professional Specialist Organizations. Organizations have been formed of criminal lawyers, corporate counsel, Crown attorneys, advocates, and other specialists. A few are national, such as the Canadian Association of Law Teachers. One or two embrace a broad spectrum of lawyers, such as the "Osgoode Society" (for legal history). Other groups set ambitious goals, such as the Continuing Legal Education Society of British Columbia, which pursues its mandate on behalf of the provincial branch of the Bar Association, the Law Society, and the law faculties.

Special Constituencies within the Profession. There are a number of relatively small organizations uniting lawyers on the basis of characteristics other than common professional interests. The Women's Law Association is an older organization; Women and Law is a younger grouping of feminists (lawyers and laypersons) concerned about both the role of women within the profession and the impact of law on women. The Thomas More Lawyers' Guild contains Catholic lawyers, and there are organizations of Jewish lawyers and of members of other religious or ethnic groups, such as native peoples. The Law Union contains progressive lawyers and other legal workers (Martin, 1985). At the other end of the spectrum is the recently founded Ontario Lawyers' Association, which might be described as a right-wing grass-roots organization.

Quasipublic Professional Bodies

A number of bodies operate under the joint auspices of the legal profession and the government. Three examples illustrate their range of interests. The Canadian Law Information Council (CLIC) promotes computerized data retrieval, assesses the knowledge needed by the profession, and educates the public about law. The Canadian Institute for the Administration of Justice (CIAJ) organizes conferences and stimulates research on the cost of justice and the organization of the judiciary.

Since 1970, legislation in almost all Canadian provinces has required that interest on lawyers' trust accounts (see table 9) be paid to a "law foundation" for public purposes (which obviously benefit the profession as well), such as law libraries, legal research and education, public legal education, and legal aid.

Compulsory Organizations

Everyone practicing law must belong to the provincial law society. Termination or suspension of membership terminates or suspends the right to practice. Practicing law without membership is an offense.

The governing body is controlled by an elected executive, whose members generally are called "benchers." Older lawyers, those practicing in cities, members of large, prestigious firms, and leading civil and criminal advocates are overrepresented in these bodies, whereas rank-and-file practitioners; women; and lawyers employed by government, universities, or corporations tend to be underrepresented (Orkin, 1971: 116–124; see tables 10, 11, this chapter). Except in Ontario, however, where elections

are at large, the governing body is elected from defined geographic constituencies and, therefore, may be relatively close to the views of most practitioners; minority and dissident viewpoints seldom are represented.

The clublike character of governing bodies is reflected in their relatively restrained behavior. There is some virtue in their passivity. For example, with one notable exception (*Re Legal Profession Act, Re Martin* [1949], D.L.R. 106 [B.C. Law Soc.], aff'd [1950], 3 D.L.R. 173 [B.C.C.A.]), the Canadian legal profession avoided attempts to enforce ideological conformity, even during the most intense period of the cold war. Indeed, leaders of the bar defended those accused during the notorious "spy trials" in the late 1940s. An air of "noblesse oblige" still often characterizes the official positions of law societies on public policy issues (Chadwick, 1981); however, members have little opportunity to influence the policies of the governing body. The annual meeting usually is pro forma, and members can express their views on the decisions taken by their representatives only through elections.

Governing bodies still do respond to pressure from voluntary organizations. For example, provincial law societies and provincial CBA branches compete or cooperate in the area of continuing legal education. Organizations of defense counsel may affect the rules of professional conduct. In addition, local law associations may shape decisions relating to the establishment of legal clinics.

Because the provincial law societies exercise delegated statutory powers and collaborate with government in legal aid and law reform, leaders of the profession seek to avoid political controversy (Giffen, 1961; Orkin, 1971). While considerable attention recently was devoted to fending off an inquiry by the Province of Ontario into professional governance (Professional Organizations Committee, 1980), the Law Society simultaneously responded to well-founded concerns about its disciplinary system.

In general, the governing bodies of the Canadian legal profession have been fairly astute politically. They have perceived that there is more to be gained by cooperating with government than by opposing it. For example, the profession's governing body supported the establishment of a Legal Aid Plan in Ontario, despite some rank-and-file skepticism, with the result that the Law Society was given responsibility for administering the scheme. Similarly, the professionally-administered plan accommodated criticism of the fee-for-service aspects by funding community-based clinics.

Law societies have hewed rather carefully to the line that their primary functions are to regulate admissions, standards of conduct, and (recently) competence (Thom, 1974). Admissions committees in most Canadian provinces have been relatively lax in scrutinizing the nonacademic credentials of applicants, refusing to deny entry for minor drug convictions and other offenses connected with adolescent crises or student culture. In

one recent unusual case, a lawyer convicted of a criminal offense involving egregious sexual misconduct with minors was disbarred (ibid.); a similar fate befell a lawyer implicated in the theft of valuable securities (*Novak* v. *Law Society of British Columbia* [1972], 31 D.L.R. [3d] 89 [B.C.S.C.]). It is relatively rare that anyone is disbarred except for dishonesty or other misconduct directly connected with professional functions, however. Of those disbarred in Ontario between 1945 and 1965, 83 percent improperly used client funds, 6 percent committed other fraud or forgery, and 8 percent neglected client affairs (Arthurs, 1970).

SYSTEMS OF PROFESSIONAL CONTROL: CODES OF ETHICS

Provincial governing bodies have statutory power to discipline their members for "conduct unbecoming a barrister or solicitor" or "unprofessional conduct" (e.g., Law Society Act, Rev. Stat. Ont. 1980, c. 233, s. 34). In some jurisdictions, these vague standards are made more precise by additional statutory language (e.g., Barristers and Solicitors Act, Rev. Stat. British Columbia 1979, c. 26, s. 50) or, more frequently, by regulations (subordinate legislation) adopted subject to the approval of the provincial cabinet (and, in Quebec, of the Professional Council) (Professions Code, Rev. Stat. Quebec 1977, c. c-26, ss. 12, 13, 94, 95). Ontario, for example, regulates the handling of trust funds very extensively (Law Society Act, Rev. Stat. Ontario 1980, c. 233, s. 63; Rev. Reg. Ont. 1980, Reg. 573).

Most provinces have also adopted professional conduct rules (Law Society of Upper Canada, 1983*c*), which are treated as guidelines rather than binding codes by bodies responsible for discipline. These codes generally were inspired by those adopted by the CBA (1920; 1974). The 1920 CBA Code was extremely vague (having been modeled on a contemporary American Bar Association document) and did not respond to the changing nature of legal practice for the next half century. Never amended and seldom referred to in disciplinary proceedings or even hortatory discussions of professional ethics, it remained a well-kept secret.

By contrast, the 1974 code was well publicized, formally adopted in most provinces, and more influential in both disciplinary proceedings and discussions of appropriate standards of professional conduct. Yet it, too, is overly vague and insufficiently rooted in reality. The code appears to adopt the perspective of the client and the public. For example, restrictions on advertising—for clearly anticompetitive purposes—are contained in a rule entitled "Making Legal Services Available" and couched in terms of the desire to avoid either burdening the public with the cost of advertising or misleading the public.

Disciplinary enforcement is preoccupied with ensuring the honesty of

lawyers (Arthurs, 1970). Regulations prescribe methods of accounting for client funds; all law societies conduct regular audits, and some engage in "spot audits"—there were 864 in Ontario in 1984. Noncompliance with these rules, even when one is negligent rather than dishonest, generally leads to discipline. Dishonesty is almost certain to result in disbarment, except when there are unusual mitigating circumstances, such as mental problems or personal tragedies. Victims of lawyer dishonesty receive payments (generally within high but fixed limits) from a compensation fund to which all lawyers must contribute. Payments in Ontario rose from Can$737,000 for 88 claims in 1981 to Can$1,182,000 for 216 claims in 1984 (Law Society of Upper Canada, Annual Reports).

Lawyers almost never are disciplined except when the public is injured by fraud, perjury, or some other criminal act (Arthurs, 1970; see also table 12, this chapter). Between 1966 and 1979 the number of complaints rose in Ontario, but the number of disbarments remained constant at approximately four a year; since then it has risen to twelve in 1980, nineteen in 1981, twenty-five in 1982, and twenty-one in 1984 (Law Society of Upper Canada, Annual Reports). Otherwise, the disciplinary process is used to enforce professional interests only in a few high-profile cases when the authority of the Law Society is challenged. For example, a recent well-publicized and extensive advertising campaign by a lawyer evoked the threat of disciplinary sanctions and stimulated extensive litigation before leading to relaxation of the rules (*Jabour* v. *Law Society of British Columbia* [1982], 137 D.L.R. [3d] 1 [Sup. Ct. Can.]).

Informal enforcement processes may influence professional behavior, however; these processes include investigations by the law society and threats to investigate, informal admonitions or formal warnings by the governing body, and social and economic sanctions by formal and informal local lawyer groups. Such informal processes generally are directed toward either matters of intraprofessional concern or minor infractions relating to public behavior or service to clients.

Self-regulation is least satisfactory in ensuring competence (Hurlburt, 1979). While there is a great deal of exhortation and a certain amount of education, there has been very little enforcement of quality standards by means of systematic or random testing. Indeed, until the adoption of the new CBA Code of Professional Conduct (rule 2) in 1974, incompetence was not explicitly declared to be unacceptable. As a consequence, the few lawyers who have been disbarred for incompetence are those who have suffered a virtually total collapse of personality and become unable to carry on their practice; in such cases, removal from practice is viewed as nondisciplinary.

Recently, however, the provincial bars have sought to reassure the public by requiring lawyers to carry "errors and omissions" insurance.

Within a few years after its introduction, claims—and hence premiums—began to mount (see table 13), especially in real estate practices (see table 14). This engendered considerable concern and led to the development of three strategies designed to enhance competence, thereby reducing both claims and premiums (Swan, 1982; Hurlburt, 1979): (1) programs of continuing legal education and "claims control" have been instituted (Gold, 1972: 23), (2) rehabilitative programs assist lawyers whose practices appear to be falling below an acceptable standard (Marshall, 1980), and (3) proper standards of practice are encouraged by experience rating of insurance premiums (in Ontario, rates varied between Can$825 and Can$3,300 in 1983/84).

Victims of incompetence also may sue lawyers for damages (Belobaba, 1978; Pritchard, 1978), and judgments appear to be increasing in number and size. Finally, a judge may intervene when an advocate performs incompetently, although this remains exceptional (*Re Solicitor* [1971], 1 Ont. Rep. 138).

Specialization has been increasing, at least in larger urban centers (Arthurs et al., 1971; Esau, 1979; Colvin et al., 1978; Colvin, 1979). Nevertheless, clients still encounter difficulty finding lawyers who can provide competent service even in such prosaic household "specialties" as criminal law, family law, or civil litigation (Trebilcock & Reiter, 1982). Proposals to certify specialists, thereby ensuring their competence and enhancing their visibility to clients, were adopted in principle by the CBA in 1983; however, the law societies remain adamantly opposed to both formal certification and systems of self-designation. Instead, the profession has attacked those who "advertise" their specialty and thereby seek competitive advantage (Professional Organizations Committee, 1980).

SYSTEMS OF PROFESSIONAL CONTROL: PROCEDURES AND INSTITUTIONS

If a complaint against a lawyer progresses beyond the stage of informal discussion, the disciplinary committee conducts a formal hearing, prosecuted by the Law Society staff or special counsel. The committee's decision often is subject to approval by, or appeal to, the full governing body (e.g., Law Society Act, Rev. Stat. Ontario 1980, c. 233, ss. 33, 34, 39). The committee can reprimand, limit the right to practice, suspend, or disbar. Some law societies also have the power to impose financial penalties (e.g., Barristers and Solicitors Act, Rev. Stat. British Columbia 1979, c. 26, s. 51[1]) and to suspend those suffering from physical or mental illness, while managing their practices to protect client assets and interests. The sanctioned lawyer (but not the complainant) can seek judicial review of

legal or procedural errors; however, judges are reluctant to retry facts or review penalties absent egregious injustice (*Prescott* v. *Law Society of British Columbia* [1971], 19 D.L.R. [3d] 446 [B.C.C.A]).

The profession thus controls both the prosecution and adjudication of misconduct. There is no provision for a "lay observer" or any other lay participation in the disciplinary process, except for the involvement of lay benchers, if any. Moreover, since most dishonest lawyers are bankrupt, clients can only seek ex gratia payments from the profession's compensation fund.

EDUCATION, SOCIALIZATION, AND ALLOCATION

HISTORICAL DEVELOPMENT

For most of the nineteenth century, and through the first half of the twentieth in some provinces (including Ontario, the largest common law jurisdiction), apprenticeship was the primary means by which Canadian lawyers were educated. Full-time law schools began to appear about 1880, but both the University of Montreal (1878) and Dalhousie University law faculties (1883) had minuscule professorial complements until after 1945, depending largely on part-time lecturers from the bench and the bar. A similar situation prevailed at the Universities of Saskatchewan and Alberta. Elsewhere, provincial law societies opened their own law schools—alone or in collaboration with universities—again primarily using practitioners as teachers (Bucknall et al., 1968; Baker, 1983; see also table 15, this chapter). When A. Z. Reed completed his classic study of legal education in Canada and the United States in 1928, therefore, it was clear that the Canadian legal profession enjoyed even more control over the production of lawyers than did its U.S. counterpart (Reed, 1928: 530).

By 1925, seven out of nine provinces required at least two years of college before entry to law school, and the others required some post-secondary study. All provinces required at least three years of legal studies, and four required attendance at local law schools. All required a period of office work and a final examination (Reed, 1925: 3; see also table 16, this chapter).

Although some law schools (including the largest common law school, Osgoode Hall in Ontario) were operated by the legal profession itself, some by a university, and some jointly by a university and the local bar, these alternatives were neither conflictual nor competitive; they merely coexisted, each reigning supreme in a particular province. Moreover, all schools had agreed on a common curriculum proposed by the CBA in the early 1920s (Reed, 1928: 203). Finally, the development of academic educa-

tion was inhibited by the sheer lack of full-time instructors: there were no more than sixteen full-time law teachers in all of Canada in 1928 (Reed, 1928: 373; Bucknall et al., 1968; Baker, 1983). It is no wonder, then, that the same assumptions that led Reed to propose a dual system of legal education in the United States persuaded him to recommend a uniform system of legal education in Canada.

The bar's monopoly over all phases of the production of lawyers lasted until the 1950s, when the university law faculties gradually claimed increasing authority over legal education. In 1957, under pressure from the academic community, Canada's largest legal professional body, the Law Society of Upper Canada (Ontario), negotiated a new arrangement with the universities giving the professoriat ultimate responsibility for the LL.B. curriculum (Arnup, 1982; Bucknall et al., 1968). In 1968 the Law Society transferred its own law school to York University (Arthurs, 1967). Similar developments in other provinces during the 1950s and 1960s, coupled with the rapid proliferation and expansion of law faculties, assured the universities their present dominance of legal education, but they seemed unprepared to assume the responsibility. As late as 1950, there were only about 40 full-time law teachers in all of Canada; fewer than 100 were added in the next decade. By 1970, however, numbers had tripled to about 450, and by 1980 they stood at 650. Between 1960 and 1980 there was considerable innovation in curriculum, teaching methods, and modes of research, sometimes engendering expressions of professional concern (MacDonald, 1979; Veitch, 1979; MacLaren, 1974). At no time, however, did law schools challenge the profession's ideology or intellectual capital (McKennirey, 1983: 118; Consultative Group on Education and Research in Law, 1983). In addition, the provincial law societies continued to control the professional training phase, which generally includes a period of apprenticeship and formal instruction in various adjectival and practical matters, as well as skills training.

LEGAL EDUCATION AS A STRATEGY OF SOCIALIZATION AND ALLOCATION

There is no scholarly tradition in Canadian law to challenge professional priorities. The strategy of the law schools has been to stand at a distance from the profession, sometimes through a scholastic concern with doctrinal analysis and sometimes through a robust critique of professional knowledge and ideology. At the same time, academics seek to be perceived as highly "professional" without being involved in, or even considering, all the activities of practicing lawyers. Legal education projects an artificial and misshapen representation of legal reality, rather like Durer's rhinoceros.

Law schools try to socialize students to an academic model of legal practice and social reality. Although the attempt largely fails, the profession lavishes considerable energy on resocializing students to professional attitudes and values through articling and the bar admission courses and also through indoctrination of new graduates. Moreover, the bar has a valuable ally: the majority of law students, who tend to identify with what they imagine to be the professional project.

There are few exceptions to these generalizations. The University of Quebec at Montreal deliberately embarked on an alternative vision of legal education, emphasizing its social dimension and expressing overt antagonism toward professional elitism (Mackay, 1979). Recently founded law schools in Calgary and Victoria made important pedagogic innovations. McGill, Ottawa, and Moncton all have responded to the bilingual and bisystemic nature of Canadian law. Several schools are committed to clinical legal education. Interdisciplinary studies, even joint degrees in law and some other field (typically business), have become available in most law schools. Students seize these varied opportunities relatively rarely, however, and the innovations affect the margins rather than the "professional" mainstream of LL.B. studies.

Professional control of entry to practice, coupled with professional administration of articling and bar admission courses, discouraged the emergence of private, entrepreneurial "cram" schools. Nothing ensured that the profession's own educational programs would maintain high standards (Law Society of Upper Canada, 1972). For example, articling is regarded as essentially a matter between student and principal. Law societies do exhort both to pursue the objectives of articling, but there is virtually no quality control. Teaching is a sideline for the articling principal, who is primarily (and sometimes totally) preoccupied with the service of clients. Students are likely either to be passive observers or to perform delegated tasks—at best of legal research and drafting, at worst of mere logistical support. The functions of an articling student seldom relate directly to the practical business of interviewing, advocacy, or negotiation. This may explain why articling is regarded as paid employment (although salaries are well below market rates for newly admitted lawyers).

Articling has acquired a secondary importance as an entree to future jobs, however. Large law firms use articling as a screening device to identify junior lawyers who may be hired on their call to the bar. Small law firms may use articling students to cope with their work loads, selecting occasional recruits when additional business warrants expansion. This is not automatic: a 1980 study revealed that 66 percent of students did not return to work at the firm where they articled, and more than 40 percent had not found any job by the end of the six-month bar admission course

that follows the articling year in Ontario (Huxter, 1981: 18). Nevertheless, students compete energetically for articling jobs (ibid.). The prestige, income, and work quality offered by large law firms makes them the first choice of many (see table 17). While these firms historically tended to recruit primarily on the basis of the "old school tie," now they emphasize academic credentials. This reflects the need for able students and juniors to handle sophisticated legal work, the diminishing acceptability of discrimination, and the growing economic power of various minority groups who are more likely to take their legal business to law firms that hire their best young members.

Large firms have little tolerance for idiosyncratic personal behavior, political views, or lifestyles. As a result, a few "ethnic" law firms have emerged, which sometimes deliberately dilute their parochial character by adding members of other groups. More recently, too, some "political" left-wing lawyers have formed firms or adopted space-sharing arrangements.

Lawyers tend to remain in the practice setting that they enter during articles or on their first jobs, although large law firms weed out some recruits after a probationary period, some small firms amalgamate with each other or with large firms, and a few individual practitioners change their practices because of either unusual success or failure (Adam & Lahey, 1981; Huxter, 1981; Berger, 1979; Colvin et al., 1978: 101).

DIVISION AND STRATIFICATION WITHIN THE LEGAL PROFESSION

THE MYTH OF A SINGLE LEGAL PROFESSION

The Canadian legal profession clings strongly to the notion that all its members engage in a common activity, share common attitudes, pursue common interests, and participate equally in the common enterprise of delivering legal services to the public. There is merely a single professional credential earned in a single fashion in each jurisdiction (except Quebec, with its *Chambre des Notaires*), a single provincial professional organization, no formal recognition of specialties or distinctive ethical codes for those who pursue them, and only loose, voluntary organizations of lawyers distinguished by special roles or interests.

The myth is patently at odds with the facts, however. Within the profession, there is a clear division of labor, clientele, and rewards (see table 18). Moreover, both the profession and the public accord differential respect and recognition to individuals and practice roles.

Why, then, does the profession insist so vigorously on its unity and homogeneity? We propose three possible explanations: (1) there is a

dearth of "hard" facts about Canadian lawyers and very little self-scrutiny by the profession, (2) the myth of professional unity helps to reinforce existing hierarchies by making them less visible, and (3) a unified profession can better protect its autonomy and influence public and governmental opinion than one that speaks with many voices.

"ELITE" LAW FIRMS

Elite law firms in Canada tend to resemble those in the United States (albeit on a somewhat reduced scale and with some distinctive Canadian touches) as a result of commonalities in their work, clientele, recruitment, and organization. Indeed, they share some multinational clients, are involved in transactions stretching across national boundaries, belong to international legal organizations, derive their legal knowledge from common sources, and occasionally are linked by international partnerships or networks of law firms.

Elite firms contain between 25 and 200 lawyers. In 1971, 10 percent of all firms earned almost half of all fees, while half of all firms earned only 14 percent (Statistics Canada, 1971). In 1985, 10 firms had more than 100 lawyers, and another 15 had between 50 and 100 (Canadian Law List, 1985). Although most operate from a single office found in the business or financial district of a large city (see table 19), a few now have branches abroad, while others are expanding on a multicity or interprovincial basis, despite local protectionism (*Black* v. *Law Society of Alta.* [1985], 5 West Wkly Rep. 284).

Elite law firms tend to be organized hierarchically. They employ a number of articling students, from whom they often choose associates. At the end of a probationary period associates either become partners or leave (see table 20). Admission to partnership occasionally occurs as a result of merger with, or absorption of, another law firm or through lateral movement.

Elite firms also depend heavily on office managers, accountants, and librarians, as well as large numbers of law clerks. Indeed, the number of specialists and law clerks sometimes equals or exceeds the number of professionally qualified lawyers (Taman, 1978; Colvin et al., 1978), and, of course, every elite law firm will employ large numbers of highly skilled secretaries and clerical personnel and invest heavily in office equipment (CBA, 1985). A managing partner or management committee is responsible for making and administering personnel policy, overseeing the financial affairs of the firm, and defining its relationship to its clients and the community at large.

Elite firms generally have significant corporate, tax, litigation, and con-

veyancing departments and sometimes specialize in industrial property, labor, transportation, and communications or estate planning as well (Colvin et al., 1978: 145). Certain lawyers may be identified as having a special aptitude for legal research and tend to perform it for other members of the firm. Senior partners may become preoccupied with the affairs of major clients, whom they cultivate and advise on business strategies, governmental and community relations, and other matters that may not involve the application of legal knowledge (Clement, 1975*a*; Gall, 1977; Porter, 1965; Newman, 1975). While many of these senior partners remain interested in "lawyers' law" and counsel their junior colleagues, some have "graduated" from the practice of law. Often it is partners in their forties and fifties who perform the most sophisticated legal work, but some may be drawn increasingly into the affairs of their corporate clients and occasionally leave the firm permanently or temporarily to serve as senior executives of major business organizations (Batten, 1980).

The financial lifeblood of the firm is the performance of legal services for its ongoing clients—major business, financial, or governmental institutions (Batten, 1980; Clement, 1975*a*; Gall, 1977; Colvin, 1979). The relationship of the elite firm to its clientele is further cemented by recruiting important individuals who have left politics or the public service and seconding firm members to various governmental bodies. Specialist departments also attract clients, often referred by other lawyers. Fearing to lose future referrals, firms take pains to ensure that the client is returned to the referring lawyer upon completion of the task at hand. Elite firms also may maintain a modest "household" practice, reflecting commitments that antedate the firm's rise to eminence, catering to the legal needs of individuals employed by their corporate clients, and responding to partners' beliefs about their professional and community responsibilities.

Because their clients are mainly wealthy institutions, elite law firms are able to charge very high fees and to compensate associates—and especially partners—accordingly (see table 21; Altman & Weil, Inc., 1980). Close association with a corporate clientele also affords these lawyers unusual opportunities to develop their own investments and business activities (subject to professional conduct and "insider trading" rules) (Adam & Lahey, 1981; Smith & Tepperman, 1974). Elite firm lawyers also enjoy the opportunity to become involved in extremely sophisticated legal work that demands, and generally elicits, a very high level of competence (Batten, 1980). Also, because elite firms are large and hierarchically structured, they can allow members to become active in professional bodies, community organizations, part-time law teaching, postgraduate study, or political activity.

The very conditions that generate these rewards also exact a considerable price. Members may be particularly concerned to avoid conduct that

might alienate clients. This produces an extreme commitment to meeting deadlines, covering all eventualities, and avoiding technical errors. The pace and intensity of professional work may well constrain the personal lives of the lawyers. Moreover, because of the close relationship that often develops between elite firm lawyers and their corporate clients, the former—if not self-selected prior to joining the firm—subsequently may be socialized in matters ranging from personal dress and deportment to political perspectives.

METROPOLITAN MEDIUM-SIZED FIRMS

Medium-sized firms of ten to thirty lawyers often share many characteristics with the elite firms. Indeed, they often are either the remaining elite firms of an earlier period, which have opted against significant growth, or incipient elite firms, perhaps based on the merger of several small partnerships. Some, however, are organized around a small number of specialties and do not purport to offer a complete line of legal services. The latter may provide incomes that, while very generous, are considerably lower than the extravagant professional and business incomes available in the elite firms.

Medium-sized metropolitan firms often aggressively pursue both new recruits and clients. Some have hired very able women and members of minority groups, whereas others, for essentially the same reason, apparently have opted for impeccable social credentials in their recruitment.

SOLO PRACTITIONERS AND SMALL FIRMS IN METROPOLITAN AREAS

The general practitioner is a central figure in the mythology of the legal profession. Solo practice and small partnerships were the most common form of legal practice until after World War II. The trend toward larger firms was evident by the 1950s (Nelligan, 1950, 1951), however, and it accelerated thereafter. Solo practitioners declined from 43 percent of all Ontario lawyers in 1950 to 21 percent in 1966 (Arthurs et al., 1971: 522–523). By the 1970s, far fewer lawyers were practicing on their own or in partnerships of two to five lawyers; however, the tendency toward consolidation was halted, and possibly reversed, by recent economic conditions and the rapid growth of the profession. Established firms are expanding at a slower rate, and small and medium-sized firms are wary of adding to their overheads by hiring new lawyers. For the first time in many years, a significant number of able young graduates find themselves in solo practice by default rather than by choice (Huxter, 1981: 177).

Solo and small firm practitioners fall into three quite different groups. First, there are the specialists (Arthurs et al., 1971: 507 ff.; Colvin et al., 1978: 158), including some of the most highly regarded practitioners of criminal and family law. Operating largely for noncorporate clients, these specialists do not require the elaborate staffs and facilities characteristic of the elite firms. Criminal defense counsel, especially, tend to reject the paraphernalia of modern practice (Schumiatcher, 1979). Although an extensive (if imperfect) legal aid system exists, it is not unusual for leading defense counsel to refuse to accept legally-aided clients, preferring to act without charge in order to underline the traditional independence of the bar and its service ethic. A few lawyers (many of them solo or small firm practitioners) are heavily dependent on legal aid, however (see table 22).

A second category of small firm practitioners are lawyer-entrepreneurs. A number of lawyers devote their energies to land assembly and mortgage financing, especially during several protracted periods of real estate speculation. Despite their considerable economic success, entrepreneurial lawyers seldom enjoy high repute within the profession. A disproportionately high number of disbarments occurred within their ranks, perhaps because they too readily accepted marketplace assumptions about relationships with investors and partners, rather than the much more circumscribed fiduciary role prescribed by codes of professional ethics (Arthurs, 1970).

In the shadow of economic difficulties, a number of young lawyers have begun to try unconventional ways of providing legal services through "law shops," charging lower fees in standardized matters, in franchised offices in store fronts, department stores, or other unconventional settings. Established lawyers have responded with hostility, invoking restrictions on advertising in order to inhibit expansion (*Re Klein and Law Society of Upper Canada; Re Dvorak and Law Society of Upper Canada* [1985], 16 D.L.R. [4th] 489). Young lawyers also have become involved in producing law reports, manuals, and practitioner-oriented texts and providing research services for law firms.

By far the greatest concentration of solo practitioners and small partnerships is in the "household sector": house transfers, uncontested divorces, debt collection, other minor civil litigation, and dealings with various levels of government (Arthurs et al., 1971: 522 ff.; Yale, 1982: 38). Because house transfers probably generate the most income, lawyers serving the household sector are particularly vulnerable to economic fluctuations, especially in the residential real estate market. Since the profit on any individual transaction is small, only volume can produce high earnings. Lay assistants, especially stenographers and title searchers, can handle most of this work, leaving the lawyer free to supervise employees and deal with clients (Colvin et al., 1978).

Because most individuals require legal services only occasionally, the solo practitioner or small partnership constantly must attract clients. This

is especially difficult in large cities, where social contact is attenuated and competition for legal business is relatively fierce because of the impossibility of creating and enforcing informal understandings about price maintenance and other restrictive practices. Disproportionate numbers of Jews and Catholics and members of other minority groups are located in this sector of practice (Arthurs et al., 1971: 523). Because the household sector offers only limited opportunity for sophisticated legal work, and because of their own personal characteristics, these practitioners enjoy limited job mobility. They will seldom be able to offer prospective employers highly developed skills and reputations.

Ideological commitments formed or reinforced during service in a law school or other community clinic setting lead some young graduates to choose practice in the household sector or in criminal or family law. Others enter loose associations or partnerships that focus on such issues as women's rights, employment law, immigration, and prisoners' rights.

LAWYERS IN SMALLER CENTERS

Practice in smaller centers seems to be concentrated within a narrower spectrum of settings. For several reasons, the largest firms are much smaller, and solo practice is potentially more rewarding and prestigious than it might be in Toronto, Montreal, or Vancouver. On one hand, large industrial or commercial concerns with plants or offices in small communities tend to rely for their important legal needs on the elite metropolitan firms, whose contacts are with their bankers, directors, and head office managers rather than with local operational personnel. On the other hand, when household clients in small centers encounter atypical or complex legal problems, such as a patent, a murder charge, or a regulatory issue, they may seek the aid of an outside expert.

Offsetting the more limited opportunities for professional advancement is the much greater scope for community recognition and collegial support. Lawyers frequently join local elites, finding their way into politics, civic works, and charities. Moreover, lawyers in small communities make formal and informal arrangements concerning fees, assist each other with personal problems in the event of disability (or even professional misconduct), and share knowledge and techniques.

LAWYERS EMPLOYED IN BUSINESS, GOVERNMENT, AND EDUCATION

Lawyers working as legal professionals in settings other than private practice share certain common characteristics: (1) their identification with

their employer's organizational aims and style produces a distinctive subculture setting them apart from private practitioners; (2) they are specialists with a highly developed sense of the particular political, social, and economic context of law; and (3) because their earnings are not related to the number of transactions processed or "billable hours" worked, employed lawyers are spared both the insecurity of solo practice and the intense pressure within elite firms. In a society characterized by increasing bureaucratization, institutional growth, legal complexity, and a more refined division of labor, therefore, the number of employed lawyers has increased over the past two decades, their status has improved, and their rewards have been enhanced.

PUBLIC INTEREST

Because legal aid offices, community clinics, and advocacy organizations are chronically short of funds, lawyers in these roles often are poorly paid and carry heavy caseloads. Since these lawyers develop special skills and insights into particular areas of law and campaign to reform them, however, their contribution and influence are out of all proportion to their numbers and rewards. Their close and ongoing identification with a single "client" and cause tends to differentiate them from other lawyers in terms of ideology, lifestyle, and perception of the legal system.

STRATIFICATION: PUBLIC AND PROFESSIONAL RANKING

Lawyers derive their prestige from at least three sources: professional skills, public activities, and association with other prestigious persons and institutions. It is not uncommon for a lawyer to be highly regarded by colleagues as a careful conveyancer, tax planner, or procedural specialist yet be virtually unknown to the general public. Conversely, lawyers who are extremely active in business, community affairs, politics, or journalism may be extremely well known to the public yet lack standing within the profession. This often is the fate of lawyers employed in business, government, and the universities. Public and private reputations tend to coalesce for lawyers in elite firms, which are involved in major transactions or litigation and deliver specialized legal services of high quality.

These rankings may be reflected in the bestowal of government honors —appointments to the bench and to boards and commissions of enquiry and ad hoc special assignments. In some provinces, moreover, political patronage may strongly influence the appointment of Queen's Counsel

and somewhat influence the appointment of lower court judges (Fowler, 1978; Robins, 1974; Angus, 1967; Ratushny, 1976). Rankings also are evidenced by election to governing bodies of law societies and voluntary organizations (Trebilcock et al., 1979). Here, too, political influences tend to dominate peer judgments about reputation.

THE MATERIAL CIRCUMSTANCES OF PRACTICE

There is a fairly direct correlation between the location, size, and attractiveness of law offices and their infrastructure (office machinery, libraries, and support staff) and the affluence of their clientele. Even solo lawyers have sought to lower costs by adopting labor-saving devices, employing paraprofessional staff (Altman & Weil, Inc., 1980: 13), locating offices in older buildings or outside the central city or sharing premises with common library facilities, reception, and telephone service.

However, cost-cutting has its limits. Law society regulations require the submission of annually audited accounts. All practitioners must pay an annual fee to the provincial professional body, contribute to a compensation fund, and pay premiums for "errors and omissions" insurance—a total of about Can$1,500 per annum in Ontario in 1984. Lawyers may bill whatever they wish, subject to subsequent arbitration by a court official (an "assessment officer" in Ontario) and the theoretical (but actually negligible) risk of professional sanctions for overcharging (Reiter, 1978: 66).

Lawyers and clients, especially large institutional clients, also may reach general understandings or explicit contractual arrangements concerning fees. Litigants in most Canadian provinces may arrange to pay a fee contingent on the outcome of the lawsuit (Arlidge, 1974; Halpern & Turnbull, 1982), although some lawyers refuse to accept them. Moreover, even in jurisdictions that do not formally permit contingent fees, lawyers often (and properly) take into account the "results achieved" in setting their fees, charging less to impecunious and unsuccessful litigants (Law Society of Upper Canada, Professional Conduct Handbook, rule 10, ss. 1 [e], 2).

Statutory tariffs cover some matters, such as the probate of wills, while court schedules of "party-and-party" costs regulate how much a losing litigant must pay for the winner's legal fees (Orkin 1968). These official indices influence what lawyers charge their own clients, adjusted for the importance of the matter, the results achieved, and the time expended (*Re A Solicitor* [1972], 3 Ont. Rep. 433). Many local lawyers groups also have adopted minimum or suggested fee tariffs for standard nonlitigious services.

Governments intervene to affect the price of legal services as well. They

have enacted legislation defining the scope of the professional monopoly, thereby restricting competition by lay persons or other occupational groups (such as accountants) and increasing lawyer income (Trebilcock & Reiter, 1982: 84 ff.); however, government affects professional incomes most strongly through legal aid schemes. Although legal aid fee structures do not govern private legal services, they may set a standard that paying clients will use. Legal clinics, legal aid staff lawyers, and publicly reimbursed private practitioners may undercut existing market prices.

This undercutting may reflect government-imposed budget limitations as well as economies of scale. In some provinces many lawyers earn a significant portion of their incomes from legal aid. When the government cuts the budget, lawyers who depend on legal aid funds may find themselves pressed to the wall. Professional criticism of cutbacks in legal aid thus expresses both a concern for access to justice and a desire to preserve professional incomes (Bowlby, 1983: 145–147).

These factors differently affect the various professional strata. Elite law firms and certain specialists generally disregard suggested fee tariffs. Solo lawyers who practice family or criminal law may be highly sensitive to the level of legal aid expenditures but largely indifferent to attempts to establish minimum conveyancing charges. Those specializing in real estate may cooperate in price-fixing, especially if they work in small communities.

THE REGULATION OF NONPRICE COMPETITION

The rules of professional conduct regulate nonprice competition primarily through limitations on the form and content of advertising (Hudec & Trebilcock, 1982; Evans & Wolfson, 1982). While the controls generally are more restrictive than those in the United States, there nevertheless are important differences among the provinces. Manitoba, the most liberal jurisdiction, permits lawyers to advertise price and nonprice information in any medium as long as they do not mislead the public, avoid "puffery," accurately describe the services offered, and adhere to the fees quoted (Mitchell, 1982: 129). Ontario not only forbids all advertising of fees (except for the cost of an initial consultation) but also limits nonfee advertising to publication of the lawyer's professional card in newspapers and other printed matter (Law Society of Upper Canada, Professional Conduct Handbook, rules 13, 14). However, the same law society also introduced a lawyer referral system that informs clients of practitioner specialties and entitles clients to an initial consultation at relatively low cost; and it established a "Law Line" telephone service providing basic information on typical legal problems and directing callers to the referral service (Bowlby, 1982: 158 ff.).

In Ontario, the Professional Organizations Committee (1980: 192) noted that individuals and small businesses in large urban settings are most likely to lack information about legal services because they are less frequent consumers than large corporate clients and because informal referral networks are less effective in large metropolitan areas. The CBA and many provincial bodies have adopted a rule whose commentary notes that "when considering whether or not limited advertising in a particular area meets the public need, consideration must be given to the clientele to be served" (Code of Professional Conduct, c. xiii, s. 6).

There is some evidence that urban solo practitioners and those in firms with less than four lawyers most strongly support the liberalization of advertising rules (Sharpe, 1981: 279). Their colleagues in rural areas and small cities oppose any easing of these restrictions by an even greater margin, however. The Supreme Court of Canada recently held that neither federal combines (antitrust) legislation nor quasiconstitutional guarantees of freedom of expression prohibit such restrictions (*Jabour* v. *Law Society of British Columbia* [1982], 137 D.L.R. [3d] 1 [Sup. Ct. Can.]).

Codes of conduct also prohibit lawyers from "touting" by approaching potential clients directly, claiming "specialist" status, attracting publicity in the media, or encouraging real estate agents, clubs, or other intermediaries to "steer" business to them (Law Society of Upper Canada, Professional Conduct Handbook, rule 13, ss. 7–8). Lawyers may not practice in multiprofessional firms, which could make internal referrals (Quinn, 1978); in some provinces, they may not practice another profession or occupation that could attract legal clients.

These measures limit the profession's urban "proletariat"—solo and small firm practitioners—at the behest of its intermediate orders, practitioners in smaller centers. Although metropolitan solo practitioners do not "poach" the clients of country lawyers, the latter seem to fear that greater competition in their own locales will disturb existing patterns of practice. Anticompetitive rules also provide a legitimate device for harrassing nonconformists in country towns and small cities. In larger centers, where enforcement is more difficult, some competition persists within the household sector despite the rules.

Elite firms and specialists attract business by joining clubs, serving as corporate directors, becoming involved in politics, providing community service, teaching part-time, and writing books. They seek to suppress competition in order to strengthen the profession's image as a superior social class rather than a "mere" trade or business. Since such restraints also invite public disapproval without conferring economic benefits, however, elite lawyers and leading specialists have no interest in actually enforcing anticompetitive rules.

EFFECT ON THE PROFESSION OF RECENT DEVELOPMENTS IN LEGAL SERVICES DELIVERY

Legal aid programs not only have encouraged more lawyers to practice criminal and family law; they also have created jobs for salaried professionals in community-based clinics in Ontario, Nova Scotia, and Saskatchewan and in government legal aid bureaus in Quebec. Indeed, legal aid may have a greater impact on lawyers and their professional careers than on low-income Canadians. Ontario established the first provincially funded judicare scheme in 1967. The number of accused represented increased from 1,587 persons in 1963 (Friedland, 1964) to nearly 41,000 in 1983, at a cost of Can$21 million, or Can$523.86 per case (Law Society of Upper Canada, 1983*a*: 49). National expenditures on legal aid rose from Can$62 million in 1975/76 to Can$90 million in 1978/79, and per capita expenditures from Can$2.71 to Can$3.81, although the latter figures vary greatly among provinces. Between 1978/79 and 1984/85, the total expenditures increased from Can$31 to Can$60 million in Quebec and from Can$34 to Can$70 million in Ontario.

Because the provinces are responsible for administering justice, their legal aid programs differ significantly (Zemans, 1979; 1983: 373–435). Federal cost-sharing agreements require the provinces to administer a flexible means test that considers income, disposable assets, indebtedness, maintenance obligations, and other expenses (National Legal Aid Research Centre, 1981: 2; Statistics Canada, 1981: 20). In addition to providing legal services for representation in court, many Canadian legal aid schemes have adopted the Scottish duty counsel system, which provides a salaried lawyer to anyone making a first court appearance after having been taken into custody. In some remote areas of the country, including the Yukon and the Northwest Territories, duty counsel travel with the court. Most are private lawyers paid a per diem, but Ontario recently hired full-time duty counsel on two-year contracts to appear on bail applications and guilty pleas in the criminal courts of metropolitan Toronto. Part-time duty counsel also serve in the family courts.

In order to ensure that legal aid remains independent of government, seven provinces have created autonomous corporations. In both Ontario and New Brunswick, a committee of the provincial law society administers the program. Within judicare jurisdictions, most regions have Area Committees composed primarily of volunteers, most of whom are lawyers, who set policy and deal with appeals from refusals of service.

New Brunswick and Alberta reimburse private practitioners for providing legal aid. Nova Scotia and Prince Edward Island deliver almost all legal aid through salaried lawyers. Although Ontario provides most legal ser-

vices through private lawyers, community clinics and the duty counsel program do employ salaried lawyers. Most other provinces deliver legal services through a mixed system, which has become known as "the Canadian compromise" between the English judicare and American salaried models. In response to the inception of community clinics, the Ontario profession commissioned its own "independent" study in 1972, which reviewed the arguments for and against salaried legal services and, not surprisingly, concluded:

> Except for limited special purposes which may suggest the full engagement of a solicitor for Legal Aid purposes, we remain of the view that the public is better served by a profession forced to compete for public patronage (rich or poor) in circumstances most likely to offer the public a meaningful choice and where the lawyer is only paid for the work done. (Law Society of Upper Canada, 1972: 42)

Nevertheless, the profession gradually accepted community clinics, partly because two judicial inquiries strongly supported them and encouraged government to increase their funding (Task Force on Legal Aid, 1974; Commission on Clinical Funding, 1978). About half of the more than fifty clinics now operating provide specialized services (such as environmental law or worker health and safety) or target particular constituencies (native Canadians, the handicapped, and Spanish-speaking clients). Community-elected boards of directors can establish standards for financial eligibility and criteria for selecting cases. Some clinics form part of multiservice centers, which offer clients not only legal assistance but also other social and medical services. Canadian clinics employ a larger ratio of paraprofessionals to lawyers than do American legal services programs, although the ratio has declined in recent years. Most Ontario clinics have developed a strategic approach to legal services, involving community education, community development, and law reform litigation.

Yet most Canadian legal aid remains concerned with the discrete claims and readily categorized legal problems of individual clients. Avrum Lazar (n.d.), a federal evaluator of legal aid programs, recently observed: "When money was more readily available, discussions about legal aid concentrated on meeting needs. Now discussions focus on controlling cost."

A British Columbia study concluded that there was little difference in the unit cost of criminal defense provided by salaried and private lawyers (Brantingham & Burns, 1981). A 1981 study of Quebec's mixed delivery system confirmed the cost-effectiveness of the salaried model, however, which had been demonstrated in an earlier Quebec study (Gervais & Cloutier, 1982: 134 and appendices; Maheur, Noiseux Roy et Compagnie, 1979). The British Columbia and Quebec studies, as well as one in Ontario, suggest that some private practitioners are specializing in legal aid, at least

in criminal matters. Even so, they may remain less expert than salaried lawyers.

Judicare systems generally pay lawyers only 75 percent of market fees. This involuntary charitable contribution was intended to express the profession's concern for the plight of the poor, but it also assumed that all lawyers would participate in legal aid, sharing their collective responsibility equally. Data indicate, however, that less than half of all lawyers have remained on the legal aid panels, and the vast majority of those handle very few cases (Ribordy, 1982*c*: 28; Brantingham & Burns, 1981: 59–60). Ontario recently assessed all lawyers an annual legal aid levy of Can$175 to assist in funding increased payments and to legitimate the profession's contribution to legal aid.

Despite the fact that many private practitioners derive virtually all their income from judicare, the organized profession barely tolerates the salaried legal aid lawyer (Morris & Stern, 1976). Clinic lawyers tend to associate primarily with other clinic employees, and employees in thirteen out of the forty-seven Ontario clinics have taken the unusual step of seeking collective bargaining rights through a union. Private lawyers also perceive their colleagues who specialize in legal aid as being on the fringes of the profession. The latter tend to practice in collectives and to locate their offices in one area or even one building. Many have been the prime movers in the development of "left-wing" law groups, such as the Ontario Law Union and Lawyers for Social Responsibility (Martin, 1985).

CONCLUSION

The cherished notion of a unified profession must give way to the more accurate portrait of lawyers divided by function, clientele, and practice setting, ranked in terms of prestige and income, differing in their concern for anticompetitive restraints, and often disagreeing about professional policies and public positions.

The ideology of professional solidarity does mediate the differences of interest and identity, however, enabling the bar to close ranks in the face of internal or external threats. This helps to explain the severe sanctions imposed for trust violations and other acts of dishonesty, which undermine the fiduciary relationship between lawyer and client. Devotion to the notion of unity also may reinforce the profession's extreme sensitivity to any challenge to its independence.

The Canadian bar continues to manifest the indicia of classic professionalism. Perhaps because of the strength of the "professional project," subgroups have been slow to assert their distinctive interests and have submitted to professional governing bodies dominated by private practi-

tioners overwhelmingly concerned with market control at the expense of innovation and development. The profession's desire to govern legal aid programs also reflects its hegemonic tendencies. Its preoccupation with preventing the "socialization" of legal services (following the example of medicine) retards the emergence of new areas of practice.

Despite eroding market control, the governing bodies of the Canadian bar enjoy greater formal and effective autonomy than do their American counterparts. Canadian lawyers have greater immunity from antitrust and other regulatory legislation than do those in England. These differences do not falsify general theories of the profession, but they do suggest that each society has the capacity to mold its own legal profession. Comparative examination must be sensitive to these particularities.

Tables

4.1. Percentage of Firms Employing Law Clerks Which Use Them in Particular Activities

Function	Substantive area								
	Family	Wills	Estates and probate	Title searching and conveyancing	Corporate law and securities	Collections (debtor-creditor)	Taxation	Civil litigation	Criminal litigation
Interviewing clients	30	16	21	34	5	19	0	32	35
Fact gathering	50	16	22	42	18	18	0	43	41
Preparing pleadings or legal documents	20	0	11	22	23	19	0	32	18
Letter writing	30	5	20	28	18	16	0	37	35
Filing documents	30	10	27	50	38	24	0	63	53
Negotiations	0	0	0	8	0	5	0	18	18
Advocacy	0	0	0	1	0	2	0	6	6
Dealing with lawyers	20	5	16	45	12	13	0	33	29
Legal research and analysis	0	0	0	16	10	9	0	25	18
Search of public records	50	21	37	64	48	20	0	60	47
Preparing clients' fees and disbursements	30	11	20	24	12	14	0	23	24
	($N = 10$)	($N = 19$)	($N = 19$)	($N = 246$)	($N = 40$)	($N = 44$)	($N = 2$)	($N = 45$)	($N = 17$)

Sources: Colvin et al. (1978: 249); Zemans (1982).

4.2. Geographic Distribution of Canadian Lawyers, 1981

Province	Percent
Newfoundland	0.8
Prince Edward Island	0.3
Nova Scotia	2.7
New Brunswick	2.0
Quebec	25.3
Ontario	39.3
Manitoba	3.5
Saskatchewan	3.0
Alberta	9.8
British Columbia	13.1
Yukon and Territories	0.2

Source: Statistics Canada (1981).

4.3. Median Income of Lawyers and Staff by Firm Size, 1979 and 1981 (Can$)

	Number of lawyers in firm											
	1		2–6		7–11		12–19		20–29		30+	
Status	1979	1981	1979	1981	1979	1981	1979	1981	1979	1981	1979	1981
Partners and proprietors	30,000	30,000	40,000	49,077	59,500	68,284	69,742	90,600	82,525	99,876	93,500	129,021
Associates	—	—	20,000	24,000	24,325	30,000	23,868	27,500	26,113	32,440	27,750	40,000
Administrators	—	—	16,681	21,750	22,000	24,300	21,710	28,250	—	33,300	—	39,000
Paralegals	15,000	15,923	13,000	18,100	17,998	16,120	18,365	17,000	17,400	20,500	17,689	—

Source: Altman and Weil, Inc. (1982: 14).

4.4. Interprovincial Mobility of Lawyers

Percentage of lawyers practicing in province in 1978 who were	Provinces[a]									
	Alb	BC	Man	NB	NWT	NS	Ont	Que	Sask	Yukon
In same community in 1973	83	85	95	86	0	94	94	95	87	67
In different community but same province in 1973	7	10	3	8	0	4	5	3	8	11
In different province in 1973	10	5	2	6	100	2	1	2	5	22

[a] *Abbreviations:* Alb—Alberta; BC—British Columbia; Man—Manitoba; NB—New Brunswick; NS—Nova Scotia; Ont—Ontario; Que—Quebec; Sask—Saskatchewan.

Source: Berger (1979: 14).

4.5. Age Distribution of Canadian Lawyers (in Percent), 1931–1981

Year	Age				
	25–34	35–44	45–54	55–64	65+
1931	27	31	20	13	8
1941	23	25	26	15	10
1951	27	25	20	17	10
1961	34	27	17	11	9
1971	36	28	17	9	7
1981	48	26	14	7	3

Source: Statistics Canada (1931–1981).

4.6. Lawyers and Notaries in Canada, by Sex, 1931–1981

Year	Male	Female	Total	Female as percent of total	Decennial percentage increase		
					Male	Female	Total
1931	8,004	54	8,058	1	—	—	—
1941	7,791	129	7,920	2	−3	139	−2
1951	8,841	197	9,038	2	13	53	14
1961	11,759	309	12,068	3	33	57	34
1971	15,535	780	16,315	5	35	152	35
1981	29,030	5,175	34,205	15	87	563	110

Source: Statistics Canada (1931–1981).

4.7. Undergraduate Law Students, 1956/57–1979/80

Year	Total number	Annual increase, %
1956/57	2,651	0.7
1958/59	2,714	1.2
1959/60	2,710	0.0
1966/67	4,464	9.2
1967/68	5,071	13.6
1968/69	5,735	13.1
1969/70	6,443	12.3
1976/77	9,204	6.1
1977/78	9,402	2.2
1978/79	9,456	0.6
1979/80	9,590	1.4

Source: Statistics Canada (1981).

4.8. Competition to Enter Law School

	1978/79	1980/81
First-year applications received	26,066	24,423
Offers made	6,890 (26.4%)	7,412 (30.3%)
First-year enrollment	3,317 (12.7%)	3,270 (13.4%)
Total enrollment	9,480	9,410

Source: McKennirey (1983: 72–73).

4.9. Annual Revenues of Law Foundations From Interest on Trust Accounts, Can$

Year	Ontario	Saskatchewan	British Columbia
1974	—	171,196	—
1975	4,056,684	383,995	—
1976	4,333,973	526,854	—
1977	4,545,742	468,495	—
1978	4,795,610	500,700	—
1979	5,200,767	580,575	—
1980	8,142,784	627,098	4,132,751
1981	16,001,874[a]	1,278,834[a]	—
1982	12,591,707[a]	1,538,824[a]	6,600,959[a]
1983	8,515,688	950,409	—
1984	9,869,816	871,743	4,454,563
1985	—	1,051,820	—

[a] The increase is attributable to high interest rates.

Source: Law Foundation, Annual Reports.

4.10. Distribution (in Percent) of Members and Elected Benchers of Law Society of Upper Canada, by Firm Size, 1978

	Metropolitan		Nonmetropolitan		Total	
Firm size	Benchers	Members	Benchers	Members	Benchers	Members
1	9.3	11.0	8.0	13.0	17.3	24.0
2–4	4.0	16.0	18.7	29.0	22.7	45.0
5–9	6.7	6.0	21.3	9.0	28.0	15.0
10+	28.0	13.0	4.0	3.0	32.0	17.0
Total	48.0	46.0	52.0	54.0	100.0	100.0

Source: Trebilcock et al. (1979).

4.11. Distribution (in Percent) of Members and Elected Benchers of Law Society of Upper Canada, by Employment Context

Employment context	Benchers elected in 1971 and 1975	Membership in February 1977
Law firm	93.75	78.4
Academic	6.25	1.2
Other	0.0	14.4
Retired or out of province	0.0	5.9

Source: Trebilcock et al. (1979: 209).

4.12. Complaints Heard by Convocation of Law Society of Upper Canada, by Nature of Misconduct, 1972–1984

Reason		Number of cases
Financial		233
Books, records, accounts	78	
Misappropriation (misapplication of clients' money)	59	
False and misleading statements, documents, records	32	
Borrowing from clients	28	
Failure to account to clients	14	
Conflict of Interest	12	
Conduct unbecoming		16
Failure to carry out clients' instructions		13
Failure to report to client or serve diligently		12
Failure to respond to LSUC communications		26
Admissions and agreed statements		36
Total		336

Source: Law Society of Upper Canada, Annual Reports.

4.13. Premium for Ontario Errors and Omission Insurance and Claims Experience

	Premium, Can$	Claims per 1,000 lawyers
1971	100	
1972	110	29.2
1973	110	37.0
1974	135	46.3
1975	135	48.5
1976	200	70.0[a]
1977	375	49.3
1978	375	74.3
1979	450	83.6
1980	665	96.4
1981	820	
1982	1,068	

[a]Distortion attributable to change in insurer.

Source: Law Society of Upper Canada, Annual Reports; Law Society of Upper Canada (1983*b*).

4.14. Causes of Loss for Payments by Ontario Errors and Omissions Insurance, 1977–1982

Cause	Percent losses	Percent claims
Missed limitation	13	16
Defective search	20	16
Ignorance of law	8	7
Failure to follow client's instruction	14	15
Undertakings	8	3
Poor communication with clients	2	2
Conflict—working for two or more parties	2	2
Other	33	39
Total	100	100
Real estate matters	62	53

Source: Law Society of Upper Canada, Annual Report (1982: 155).

4.15. Law Faculties and Enrollments, 1925

	Teachers		
School	Full-time	Part-time	Students
Dalhousie	3	20	50
McGill	3	12	64
Osgoode Hall	3	3	353
Saskatchewan	3	2	42
Manitoba	3	7	55
Montreal	0	17	149
Alberta	3	4	56
Laval	0	22	89
New Brunswick	0	17	20
Vancouver	0	—	31

Source: Law Society of Upper Canada (1927).

4.16. Costs, Prerequisites, and Length of Legal Training, 1927/28

School	Tuition, Can$	College prerequisite (years)	Course length (years)	Academic year (weeks)	Concurrent with clerkship
Alberta	115	2	3	24	No
Vancouver	15	1	3	24	Yes
Manitoba	108–118	2	4	28	Yes (2 of 4)
New Brunswick	102	2	3	24	Yes
Nova Scotia	162	2	3	29	No
Ontario	100	2	3	29	Yes
McGill	162–122	2	3	30	No
Montreal	160	Degree	3	32.5	Yes
Laval	125	Degree	3	32.5	Yes
Saskatchewan	71	2	3	27	No

Source: Reed (1928).

4.17. Mean Number of Lawyers and Articling Students by Firm Size, Ontario, 1977

Firm size (lawyers)	Toronto		Rest of Ontario		Total	
	Lawyers	Articling students	Lawyers	Articling students	Lawyers	Articling students
1	1	0.1	1	0.1	1	0.1
2–4	2.5	0.3	2.6	0.3	2.5	0.3
5–9	6.6	1.1	6.1	1.2	6.3	1.1
10+	23.4	4.2	12.0	1.6	19.8	3.4

Source: Colvin et al. (1978: 103).

4.18. Clientele (in Percent) by Firm Size, Ontario, 1976

Number of lawyers in firm	Public corporations	Nonpublic corporations and unincorporated businesses	Legal aid recipients	Other funding	Government and nonprofit	Other
1	3	17	14	61	3	1
2–4	4	21	11	60	3	1
5–9	8	30	8	48	5	1
10+	16	42	4	33	5	0

Source: Colvin et al. (1978: 87).

4.19. Distribution (in Percent) of Firms by Size of Firm and City, Ontario, 1977

City size	Firm size (lawyers) 1	2–4	5–9	10+
Under 30,000	16.6	20.4	13.7	0
30,000–100,000	14.3	17.7	18.0	8.3
100,000–500,000	23.6	24.8	30.2	19.4
500,000+	45.6	37.1	38.1	72.2

Source: Colvin et al. (1978: 160).

4.20. Length of Time (in Percent) to Partnership, by Firm Size

Years to partnership	Number of lawyers in firm 1	2–5	6–10	10+	Total
Under 5	54.5	59.8	34.3	14.3	44.2
5	36.4	26.8	40.0	51.4	36.4
Over 5	9.1	13.4	25.7	34.3	19.4

Source: Canadian Bar Association (1985).

4.21. Income of Lawyers by Experience and Firm Size, 1985, Can$

Year of admission	1 Partner		2–5 Partners		6–10 Partners		11 Partners or more	
	Partners	Associates	Partners	Associates	Partners	Associates	Partners	Associates
1984				25,200		21,000		26,200
1983			50,300	29,100		28,400		32,600
1982			57,400	35,000		27,700		37,400
1981			50,300	33,300		37,200		41,000
1980								49,200
1979			65,900					
1978					72,400		86,300	
1977								
1974–1976	47,500		73,800	45,400[a]	85,000	39,800[a]	107,300	
1970–1973			73,700		91,700		120,900	
1964–1969			90,400		90,300		136,200	
Before 1964			98,900		94,300		145,000	

[a]Prior to 1978

Source: Canadian Bar Association (1985).

4.22. Distribution of Legal Aid Payments by Lawyer, Ontario, 1985

Amount paid (Can$)	Number of lawyers	Percent of lawyers paid
1–1,000	1,329	27.3
1,000–5,000	1,671	34.3
5,000–10,000	730	15.0
10,000–20,000	589	12.1
20,000–30,000	241	4.9
30,000–40,000	119	2.4
Over 40,000	191	4.0

Source: Law Society of Upper Canada (1985: 17).

NOTES

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1. Notaries Act, Rev. Stat. Quebec 1977, c. N-2. The Quebec notary "becomes the confidential advisor in family affairs; he is entrusted with the winding up and management of estates; makes reports on titles, secures charters for joint stock companies; receives oaths and statutory declarations; acts as legal advisor for his clients; negotiates loans and acts as agent for the sale of real estate" (Canadian Law List, 1985: 1158–1159). In all other Canadian provinces, except British Columbia, notaries are limited to taking affidavits; "notarizing" documents (i.e., attesting them to be true); and drawing, passing, or issuing deeds and contracts (see, e.g., Ontario's Notaries Act, Rev. Stat. Ontario 1980, c. 319, s. 34). All lawyers in private practice and most lawyers employed by governments or corporations also hold an appointment as a notary. Nonlawyer notaries usually are corporate officers or in businesses such as travel agencies, where notarization of documents frequently is required. The Professional Organizations Committee estimated that there were 552 nonlawyer notaries in Ontario.

2. Provincial law societies provide for readmission (see, e.g., Law Society Regulations, Law Society of Upper Canada [1975], ss. 30[2], 31). However, they limit the return of judges or government administrators to avoid conflicts of interest (see, e.g., *Manitoba Professional Conduct Handbook*, 1982: 64; Barreau de Quebec, 1976: s. 99 [a]).

3. See Laskin (1969) and Fowler (1978). In Ontario, any lawyer in good standing with at least twelve years' experience and peer recommendations can

apply. There has been no limit on the number of appointments and no requirement to canvass the views of the profession or the judiciary. Roberts (1984) estimated that 3,000 of the province's 16,000 lawyers were Queen's Counsel. In 1986 the provincial government generated considerable controversy by announcing that it would cease to recommend further appointments and was abolishing existing titles retroactively.

4. Zemans (1986: 9–10) found that the ratio of community legal workers to lawyers in Ontario legal aid clinics was slightly greater than 2 : 1 in 1980, but by 1984 it had dropped to 1.6 : 1.

5. Altman and Weil, Inc. (1980: 14) found that there were 0.23 paralegals per lawyer in Canada compared to 0.17 in the United States. The highest ratio is in Ontario (0.25) and the lowest, in Quebec (0.10). Small firms and sole practitioners have a higher ratio than do large firms.

6. See, for example, Statutory Powers Procedures Act, Rev. Stat. Ontario 1980, c. 484, s. 10; Rules of the Provincial Court (Civil Division), Ontario Reg. 797/84; Criminal Code, Rev. Stat. Canada 1970, c. 34, s. 735. There are no rules permitting Canadian law students to appear in superior courts. A study of Toronto labor arbitration between 1971 and 1973 revealed that trade unions use lawyers in approximately one-third of cases—42 percent where an employee has been discharged. In all other cases, a union representative appeared for the member (Goldblatt, 1974: 30–42).

7. In determining the "real market" for legal services it is necessary to consider the effect on aggregate demand of corporate as well as individual clients, of changing intensities of legal regulation, and of overall fluctuations in economic activity.

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